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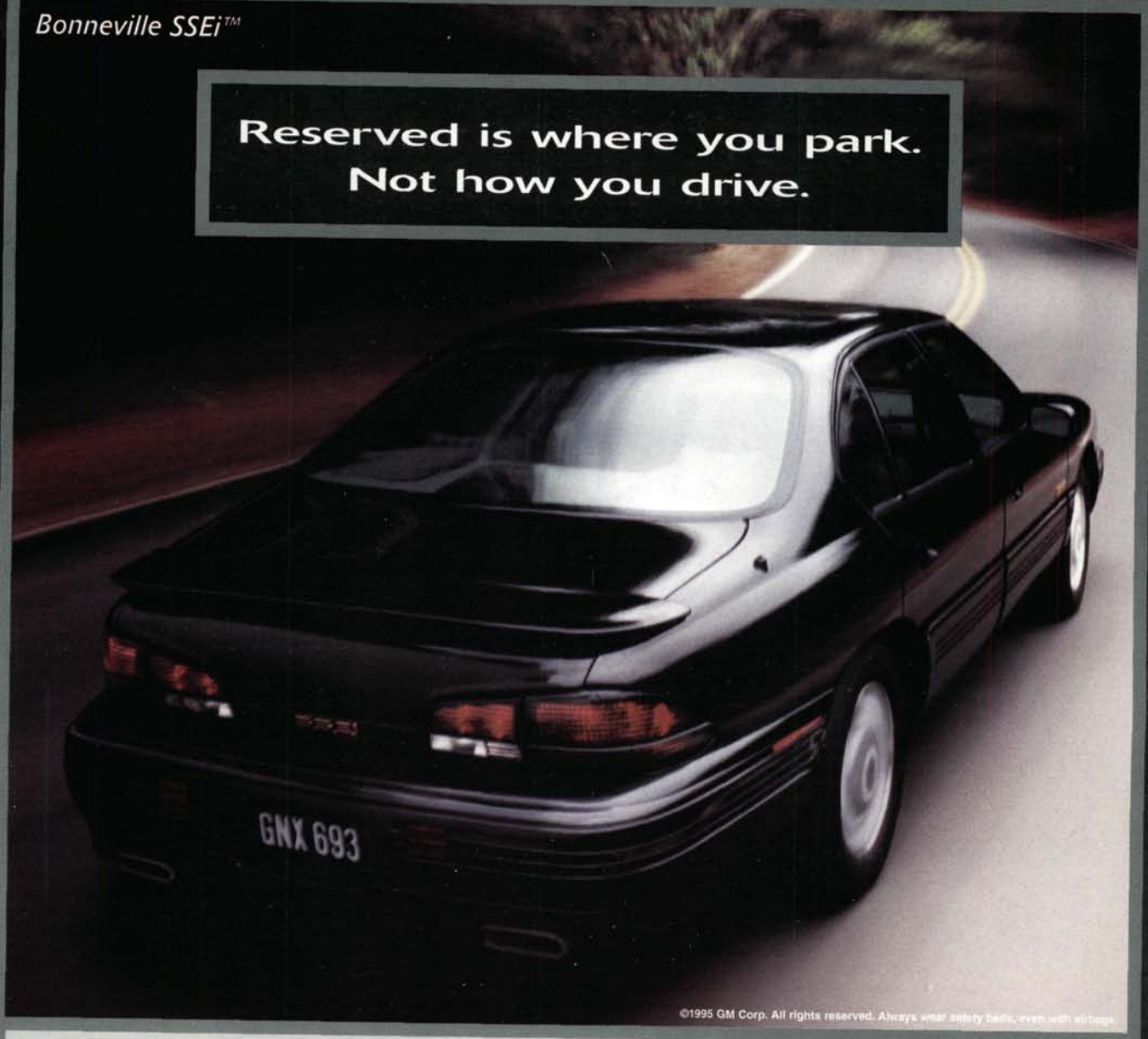

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NATIONAL REVIEW

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Letters

Let Freedom Ring

Thanks for the eye-opening "Vendettas" by Julian Manyon and "If Yeltsin Only Knew . . ." by Peter Rodman [Feb. 20]. One wonders if modern Americans have lost their old-time, red-blooded love of freedom. Where is our straight-out indignation at Russia's barbaric massacre of the tiny nation of Chechnya? Let's see our leaders in Washington and elsewhere show a little more passion on this subject. If we hope to inspire a new generation of conservative and Republican voters, it won't hurt to show that we have some larger concerns. The brave people of Chechnya are an inspiration—whatever their faults. Let's turn off the dollar spigot to the old, still evil empire. Do Americans want to see their tax dollars indirectly funding the assault on the people of Chechnya?

Paul Crear
Severance, N.Y.

What You Own Is What We Want

As I read Robert Bauman's sensational "Take It Away" [Feb. 20], I was filled with fear over what we have let our nation become. Controversy surrounding forfeiture law is not new; however, it seems unable to catch the attention of the American people. To me, these egregious violations of our personal rights over our property represent the next logical step in the development of a tyrannical society, a step the people must fight if liberty is to be maintained. No longer content with the forced extraction of resources through taxation, zealots within the Federal Government are literally stealing our property. This happens while we, the innocent and uninformed, are propagandized that this is all for the sake of "the war on crime." Are we blind?

Reform of these asset-forfeiture laws should be a natural issue for the new Congress. If it's not, perhaps they are not as dedicated to reducing the size and power of government as they claim. Our liberty is ours to defend. We must do so on this issue, or the people's already diminished trust in the law may collapse entirely. The consequences of that are too awful to imagine.

James E. McConville
Ft. Huachuca, Ariz.

Are You Positive?

While I agree with Amitai Etzioni that the FDA should approve a home HIV test kit without further delay ["Blood Simple," Feb. 20], I disagree with his reasoning, based as it is on starry-eyed notions of human behavior. He thinks the kit will save lives by helping the HIV-positive to "discharge their moral obligations" to disclose their infection to prospective sexual partners, but he points out that several gay leaders deny the existence of such obligations. Gay activists have prevented the implementation of truly effective measures against HIV transmission; this clique has determined that the right to be free from persecution supersedes the right to survive.

Not that a home test kit qualifies as a truly effective measure. What a home HIV test will tell you is your own HIV status. What it cannot tell you is what you really need to know to protect yourself from infection, namely, the HIV status of a sexual partner. The home kit neither guarantees that your lover will decide to be tested nor prevents him or her from lying to you. One can easily foresee a market for "anonymous ID code numbers" sold by unscrupulous HIV-negative persons to the more deceitful among high-risk groups who wish to continue to enjoy unsafe sex with unsuspecting partners.

Unless and until America adopts a program of universal, mandatory, periodic HIV testing with sexual contact tracing and notification as well as other sanctions against intentional or negligent transmission, you need to treat every potential sexual partner (outside of a strictly monogamous, long-term relationship) as though he or she were HIV positive.

Stuart Creque
Moraga, Calif.

"She's very sick and miserable. But I'm sure she can make it to the phone."

No Taxes for Prayer

Sorry, but I don't buy John O'Sullivan's plan for amending the Constitution ["From the Editor," Feb. 20] to allow religious division of public-school children into multiple classes, each "taught its religion by a priest, rabbi, or minister, brought in for the occasion." I don't want my tax dollars spent on instruction by the Satanic minister who will be brought in to teach the inevitable student who worships at the Church of Satan. And then of course there will be the tax-supported classes for the Church of Scientology, the Jimi Hendrix Divine Purple Haze Temple, and whatever other "church" a child's parent declares he's a member of.

Unless, of course, your proposed amendment will define what an "authentic" or acceptable church is, thus favoring some religions over others, which you appear to agree is what the First Amendment was designed to avoid. Best leave religious matters entirely to the family, and keep government out of it completely.

Eric M. Bram
Centreville, Va.

We already make official judgments on which churches count as "authentic" when we grant tax-exempt status to them. Of course, we may not always make sensible judgments. And Mr. Bram is quite right to warn us of giving such status to Satanists, etc. But the Satanists seem to get their program taught in the schools anyway, if what I read about sex education is correct.
—JOS

On POWs

John Corry's review of my book *Prisoners of Hope* [Feb. 6] reminds me of the announcement by a boy in my sixth-grade class that *National Geographic* was a pornography magazine. In both cases, these lads focused only on what titillated them and ignored the rest. In Mr. Corry's case, I wonder if he even read more than a few chapters of my book.

As Mr. Corry states, I was indeed deceived by activists claiming to have proof that Americans are still held captive in Vietnam. But that is not why I eventually concluded that no POWs remain in Southeast Asia. As detailed in the first part of my book, my conclusions are based

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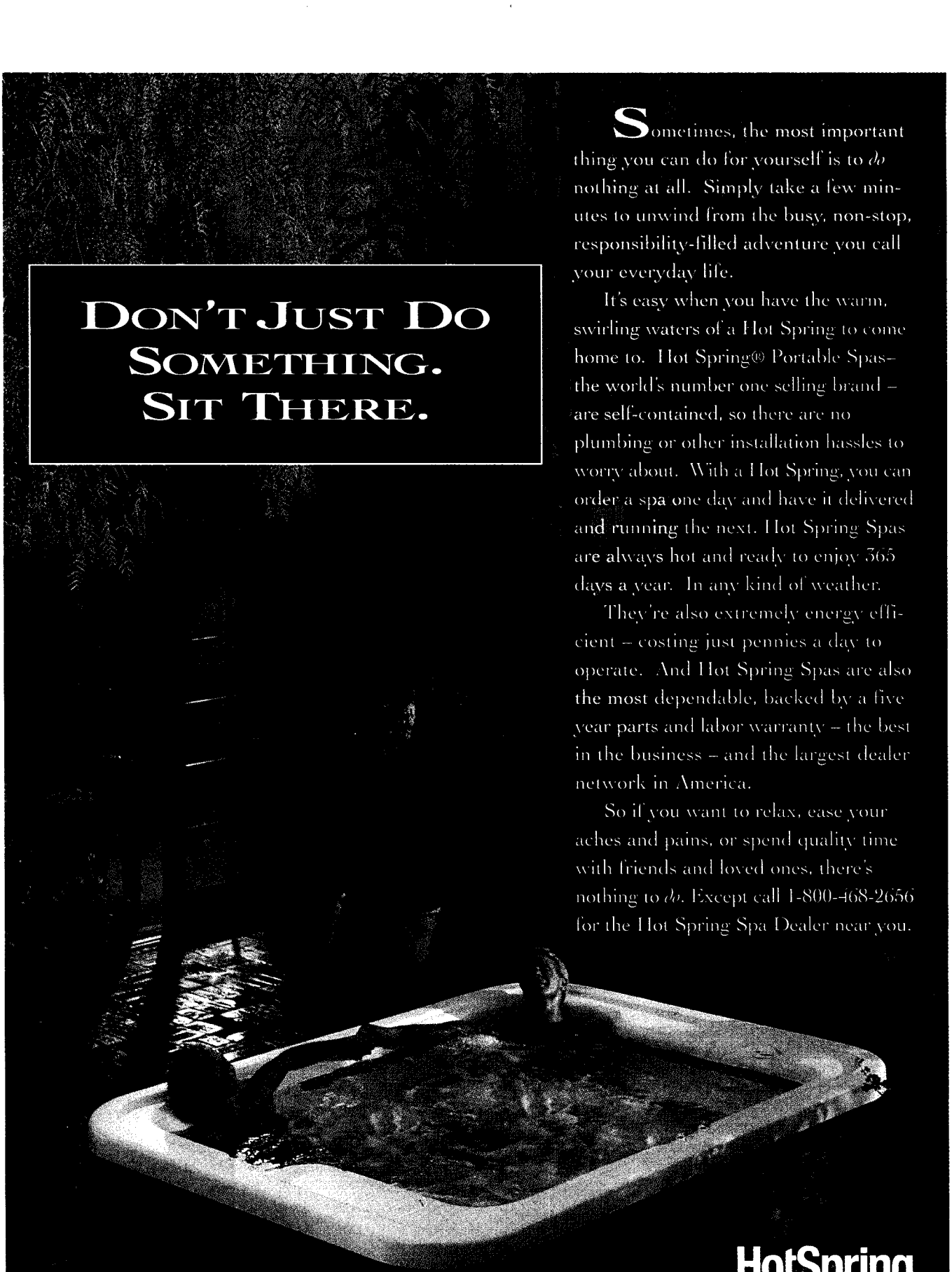

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on a number of things, including the fact that the men could not have survived this long in captivity, and that the Vietnamese have no motive for holding them.

Regarding the charge that my reporting was "extraordinarily selective," the hardest part about writing the book was deciding what to leave out in order to meet the publisher's length requirement. But I had no problem whatsoever in leaving out what Mr. Corry complains about: the findings of certain intelligence investigators working for the Senate Select Committee on POW/MIA Affairs. The motives of these investigators, who at one point included grey-flannel Rambo Billy Hendon, were at best suspect.

And Mr. Corry takes exception to my description of the Quang document, which he has used to bolster his own argument that an MIA cover-up exists. Rather than "summarily" dismissing it as a CIA forgery, my book states that the document represented a successful sting operation and forced the Vietnamese to turn over material they had previously denied holding.

Susan Katz Keating
Springfield, Va.

I read all of Mrs. Keating's book, straight through to the epilogue, where I found the reference to the Quang document. Mrs. Keating wrote that she had "learned" it was a forgery, without telling us how she had learned it, or how the forgery was carried out. In other words, she summarily dismissed it. Meanwhile, whatever the motives of the Senate investigators, they were unanimous in their finding: MIAs were held in captivity, at least through 1989. An author who writes a book about MIAs and ignores that, I think, is guilty of selective reporting. —JC

Canon Fodder

Harold Bloom sometimes seems to love the idea of the canon more than he loves literature itself ["Books, Arts & Manners," Jan. 23]. Defending the canon these days, in the face of so much that is obviously worse, is an activity with which many on the Right are quite comfortable. But unlike most cultural conservatives, I consider canons a waste of time. Though Dante is surely greater than Danielle Steel, if you put him in the canon he will be read because he is canonic rather than because he is great, until his canonicity takes the place of his greatness.

With a few exceptions, most of the members of Bloom's core canon have been chosen, not for their timeless excellence, but for their being directly causative of this passing cultural moment that is the twentieth century. As someone of strongly classicizing tastes, however, I find it odd that the debate about the canon always concerns who is included and who is left out, rather than who has dropped out along the way. What about Horace and Pindar? Where are Livy, Ariosto, and Corneille? These authors were once the very bedrock of a liberal education, yet they are invisible to Bloom and the educators who promote Great Books curricula, not because they are not excellent, but because their excellence happens not to be causative of us.

The only good thing about canons is that they sometimes prompt the individual reader to pick up a great book. But as of that moment he is on his own: the only real canon he can ever have is the one he makes for himself. If he has the discernment to see that Dante is great, he doesn't need the canon; if he lacks that discernment, no canon will help him for very long.

James Gardner
Rio de Janeiro, Brazil

Courage and Honor

The New Jersey prosecutor's decision not to re-try Kelly Michaels is a reflection of what a courageous reporter like Dorothy Rabinowitz can accomplish ["The Week," Jan. 23], but it also serves as one final achievement for a great lawyer of our era.

Several years ago civil-rights attorney Morton Stavis became convinced of Miss Michaels's innocence. When the Center for Constitutional Rights, the organization he founded, refused to accept her case, he took it on his own. He worked at night and on weekends, devoting one whole room in his home to the project. He enlisted the help of lawyers and law students from around the nation. Like Mr. Stavis, they all worked without compensation.

Sadly, Morton Stavis passed away on the eve of oral argument, after working up the appeal to the New Jersey Supreme Court. Thus, he did not live to see the court announce its verdict. For everyone who came to know him, however, his dedication and professionalism will serve as examples of the legal profession at its very finest.

Ronald J. Rychlak
Law Center, University of Mississippi
University, Miss.

The Sweet American Dream

How disappointing to see Rich Lowry ["The Undeserving Rich," Dec. 31] criticizing the Fanjul family for their economic success in America. The Fanjuls fled to America after their businesses were confiscated, with a strong set of values and the desire to succeed. With hard work, intelligence, and sacrifice they have built a business that employs thousands and contributes millions of dollars to the American economy. And yes, they have prospered personally. The Fanjuls represent the American Dream.

Mr. Lowry neglects the fact that the price of sugar on the world market is seriously depressed, not by the "invisible hand" of the free market, but rather by dumping. Producing sugar anywhere in the world costs more than what sugar has sold for on the dump market (about 13 per cent of total world market) in recent years. This is why our Caribbean neighbors and other low-cost producers of sugar support the U.S. sugar policy, which does not cost the American taxpayer one dime, and benefits not just a small number of farmers, but tens of thousands in over thirty states.

NATIONAL REVIEW criticizing Cuban exiles who fled Communism in favor of freedom and democracy? Amazing. NATIONAL REVIEW criticizing capitalist entrepreneurs who built a successful family business? Unbelievable. NATIONAL REVIEW criticizing an industry that does not need or want taxpayer subsidies? Incredible. Let's hope the members of the new Republican majority in Congress missed this issue of NATIONAL REVIEW.

Larry L. Pelton
Business Development Board
West Palm Beach, Fla.

I don't doubt that the Fanjuls are brave, industrious, and anti-Communist. I just wonder why such impressive people need a government crutch. The sugar program has typically kept the price of domestic sugar twice as high as the price on the world market. A 1993 General Accounting Office report says that in 1991 42 per cent of the sugar grower benefits from the program went to 1 per cent of all sugar farms. Mr. Pelton is right that this doesn't cost taxpayers a dime. But it costs consumers $1.4 billion a year, according to the GAO. The sugar program may indeed be a sweet deal—but not for the average American. —RL

Movie Madness

In his review of the film *The Madness of King George* [Jan. 23], based on Alan Bennett's play *The Madness of King George III*, John Simon notes that "the film title jettisons the numeral." However, Mr. Simon neglects to mention the reason for this deletion—namely, that a substantial portion of its potential audience would have taken the film to be a sequel.

Bill King
Toronto, Ont.

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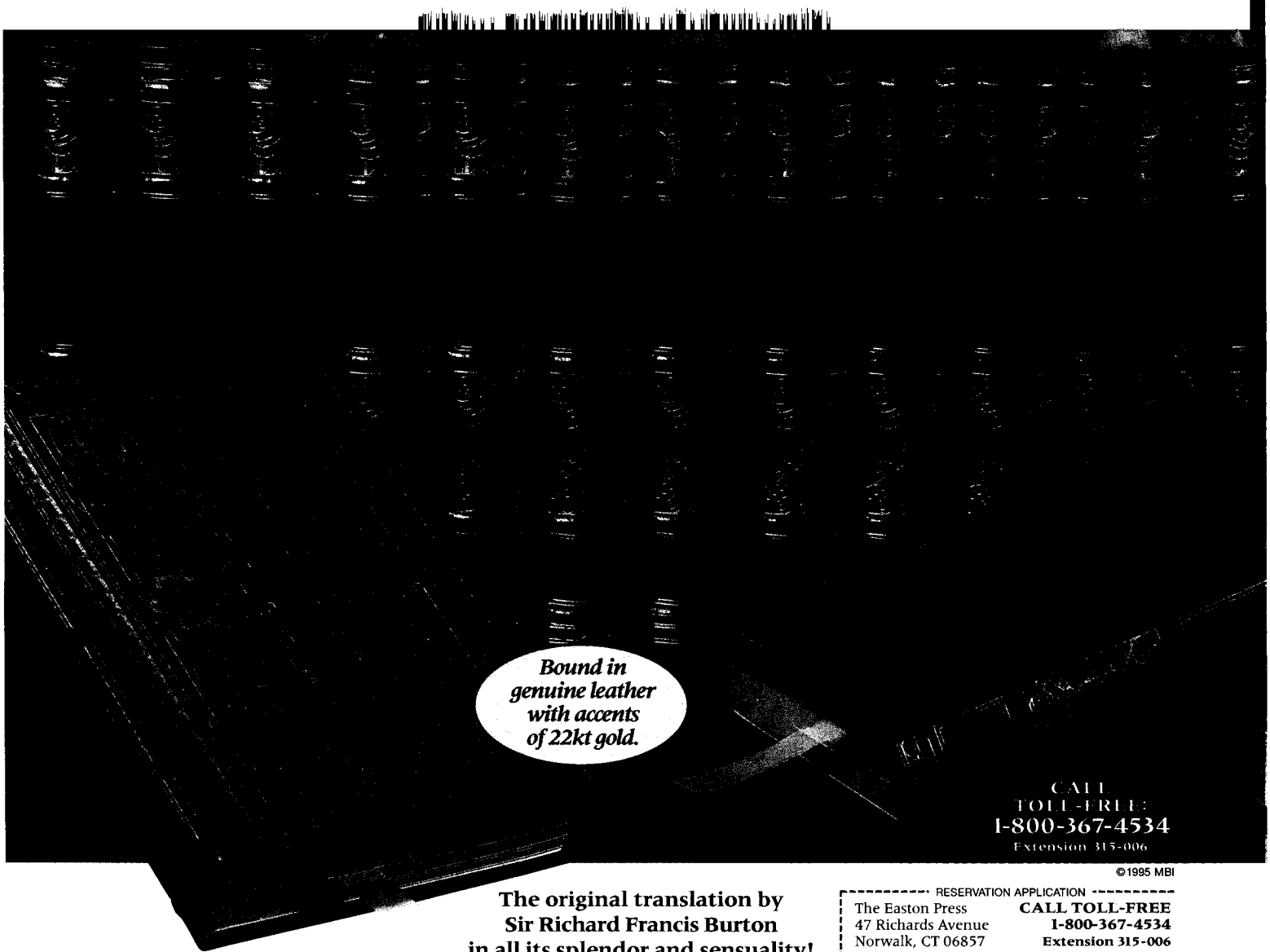

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FROM THE EDITOR

Reverse (for) Racism

■ Having consistently opposed affirmative-action quotas and set-asides as morally wrong and socially destructive, NATIONAL REVIEW is naturally pleased at the dramatic collapse of support for them. But how did a shameful policy of reverse racism persist for so long? Paul Craig Roberts and Lawrence M. Stratton Jr. (page 36) describe the deceptive way it was imposed upon an unwilling American people. Once that deception frayed, quotas became unacceptable.

But they have not yet been dismantled—and the sense that they have already gone is the strongest reason for fearing they may survive. If the California Civil Rights Initiative is thought to have won in advance, for instance, its supporters may simply not bother to collect the number of signatures needed to place it on the ballot.

A second risk is that, as Mr. Clinton and other Democrats have been hinting, the present race and gender quotas may simply be replaced by quotas for the "economically disadvantaged" or whomever. That would be quite as objectionable as the present sex- and race-based preferences, since government-allocated caste privileges would still outweigh individual merit.

But it would also be open to greater abuse and absurdities, since sex and race are at least reasonably fixed categories, whereas economic disadvantage is both a matter of arbitrary definition *and* a state through which large numbers of people pass at different stages in their lives. Come the next downturn in the property market, Donald Trump might qualify.

That leaves the GOP, yesterday voting for quotas while denying the fact, today nervously opposing them, and always spooked by anything connected to race or sex. Inevitably, we hear from GOP "moderates" (i.e., liberals) who urge "caution" (i.e., inaction) lest outright opposition to quotas alarm "women" (i.e., feminists).

What this argument ignores is that quotas alienate not simply "angry" white males—have you noticed, incidentally, that white anger is a Bad Thing but black rage a Good One?—but also their wives and mothers, who love them and see their futures as inseparably joined.

Married women are among what Frederick Lynch calls the "invisible victims" of affirmative action. They vote disproportionately for the GOP—the marriage gap trumping the gender gap. But the GOP is unaware of this.

It seems that, in considering a new political issue, Republicans assume that only their opponents can vote.

■ I am often surprised by which items in this column generate a response—and always surprised by the responses themselves. My recent squib lamenting that Sharon Stone's comic gifts were being neglected is a case in point.

Giving vent to such expressions of taste is one of the charms of writing a column. We all leave a film or play polishing critical insights, but only columnists and critics get the chance to broadcast them more widely than over dinner afterward.

Of course, reviews and columns are themselves perishable. Once I had discouraged our assistant publisher from sending the column to Miss Stone's agent, I assumed it would fade without trace or echo. *NR* has its readers and allies in Hollywood—some of whom emerged to attend the recent National Review Institute conference there—but I did not imagine they would be in Miss Stone's circle.

But I was too hasty. J. B. White, an *NR* reader and a screenwriter, tells me that Miss Stone has recently contracted to produce and star in a romantic comedy inspired by the classic Tracy/Hepburn movies of the 1940s. It is entitled (at present, anyway) *Doctor, Lawyer, Indian Chief*, and written by Mr. White himself.

I can hardly wait to see it, and I hope it is a roaring success. After all, my reputation as a film critic is on the line.

—JOHN O'SULLIVAN

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FOR THE RECORD

■ As **Bob Dole** kicked off first weekend of campaigning in New Hampshire with new Mr. Warmth image, **Phil Gramm** admitted he'd had tough first week in presidential race. Gramm's comment at smash-hit Dallas fundraiser (which featured scintillating docu-bio, brought in a record $4.1 million, and had **Charlton Heston** as MC) was reference to media coverage that criticized his focus on economics (*Wall Street Journal*), discussed long-resolved disputes about his personal finances (*U.S. News & World Report*), and reminded conservatives he went along with 1990 **Bush** violation of "No New Taxes" (*Washington Times* columnist **Sam Francis**). But **Stan Huckaby**, GOP's world-class expert on campaign financing, notes Gramm's money advantage is not insignificant—since '76, he who raises the most money the year before primaries wins nomination. . . . With **Jack Kemp**'s disappointing decision to drop out, some conservatives looking in House and Senate for a new candidate. Discouraged Kemp supporter and Calif. GOP activist **Steve Merksamer** told media party needs "**Reagan**esque leader" who preaches "tolerance and inclusiveness." . . . New Hampshire write-in campaign for **Colin Powell** already under way, reports *Boston Globe*. . . . Meanwhile, listlessness of **Bill** and **Hillary Clinton** in recent appearances raises possibility of **LBJ**-style surprise announcement that one term is enough. Bill recently "fumed to advisors," says *U.S. News & World Report*, that "I don't care who runs this campaign, all you care about is who is up or down."

■ Senate Banking Chairman **Al D'Amato** and Sen. **Bob Bennett** (R., Utah) hot on the trail of U.S. culprits in Mexican peso crisis and will call Treasury Dept. and International Monetary Fund aides to testify. *Wall Street Journal*'s well-informed **Paul Gigot** says Treasury's **Larry Summers** and Fund's **Stanley Fischer** may have been influenced by pro-devaluation MIT economist **Rudiger Dornbusch**. . . . But GOP Banking Committee members may be paper tigers—they rolled over and played dead during recent testimony by Federal Reserve chairman **Alan Greenspan**, who got tough questions only from Sen. **Paul Sarbanes** (D., Md.). In testimony rife with references to "imbalances" and "unsustainable growth" in economy, Greenspan, who wrote first Clinton budget and loves D.C. power game, made it clear he feels Fed job makes him economic czar, not just Fed's price-stabilizer.

■ Trial lawyers are smearing rising GOP star Rep. **Christopher Cox** (R., Calif.), himself a Harvard lawyer and securities expert, for pushing restrictions on frivolous securities suits. The lawyers are getting surprising help from Associated Press. In stories by Washington bureau's **Richard Keil**, AP claimed Cox introduced bill only after recent threat of involvement in litigation (a harassment attempt by bill's opponents); in fact, Cox wrote bill last summer. In follow-up piece given big play by *L.A. Times*, Keil did journalistic somersaults to allege a Cox relationship with a California stock swindler who years ago retained a law firm where Cox worked. Cox wants legendary wire service to retract and apologize. . . . Dispute over recent *60 Minutes* attack on Catholic beliefs continues as CBS correspondent **Mike Wallace** defends program, which **William Donohue** of Catholic League called "succor for bigots." Wallace told *Sunday Visitor* the fringe types he and producer **Barry Lando** interviewed were "sober church workers, nuns and priests, and just plain concerned Catholics."

"Be careful what you say—this room is bugged."

■ Czech President **Vaclav Havel** says West is refusing to take security threats in Central Europe seriously and alleges German Chancellor **Helmut Kohl**'s willingness to see Russian President **Boris Yeltsin** in best possible light may lead to "a new Yalta." . . . Cozy ties of some Eastern European governments with KGB still a problem, says Polish journalist **Josef Darski**, who writes in *Uncaptive Minds*: "the first two non-Communist administrations in Poland were interested in maintaining a special relationship with the KGB or were at least forced to do so." . . . Nobel laureate **Milton Friedman** says Hong Kong won't survive absorption by China; Peking, he notes, won't tolerate an HK currency tied to U.S. dollars. . . . Pentagon planners are focusing on Third World as Air Force is "identifying hundreds of potential targets [that are] developing chemical, biological, and nuclear weapons," says **Bruce Balin** in new book *Global Zero Alert for Nuclear Forces*.

■ The Fund for American Studies summer institute for college students (June 7 to July 22) at Georgetown University features academic study and internships for 6 college credits. Application deadline is March 31; call 800-741-6964. . . . Institute for Republican Women hosting forum on "The Coming Conservative Era: How It Is Happening," March 17–18, Vail, Colo. Speakers include former Delaware Gov. **Pete du Pont**, former Wyoming Sen. **Malcolm Wallop**. For info call **Deborah Price**, 303-926-4446.

■ When freshman Rep. **Rick White** (R., Wash.), a lawyer, told his wife, **Vicki**, he was going to run for Congress, she had a question. "Why in the world do you want to go from the second most-hated profession in the world to the most hated profession in the world?"

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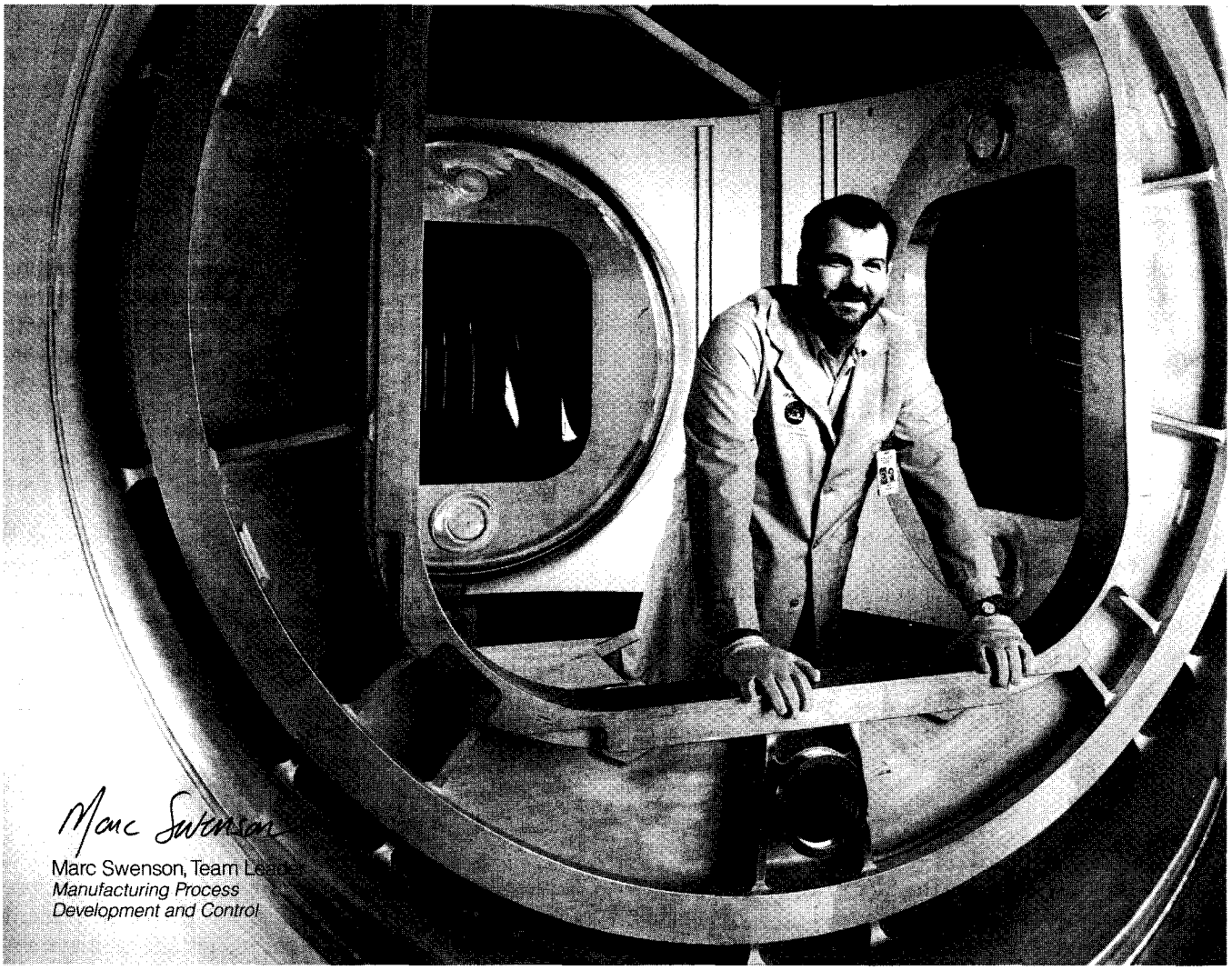
PROGRESS REPORT

FEBRUARY 1995



Marc Swenson, Team Leader
Manufacturing Process Development and Control

"THIS IS REAL FLIGHT HARDWARE. AND THE FIRST PIECE OF THE SPACE STATION WILL FLY IN LESS THAN THREE YEARS."

"We've been making progress on the Space Station for quite a while. But what's so great about right now is that you can really see the progress. From where I'm standing, in fact, I can see the structures of two connecting nodes, the habitation module, and parts of the U.S. laboratory module. This is no rehearsal. We're well on our way toward a long-term presence in space."

Huntsville, Alabama
Boeing started the girth welding of the U.S. Node Structural Test Article on November 22, 1994. Also, the robotic welding of U.S. Node 1 Flight Article was started on November 30, 1994.

Huntington Beach, California
On January 16, 1995, McDonnell Douglas began fabrication of the secondary structure for the Node Structural Test Article.

Canoga Park, California
This past November and December, Rocketdyne shipped 90 solar cell modules. These flight articles will be part of a jointly-developed American/Russian solar array which will be flown to the Mir space station on the shuttle in October of 1995.

BOEING

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THE WEEK

■ Mme Jeanne-Louise Calment of Arles, France, has celebrated her 120th birthday, which makes her one of a select few who address Strom Thurmond as "Sonny."

■ The Balanced Budget Amendment remains in senatorial limbo as we go to press. It is an imperfect tool (see Hadley Arkes, p. 58), especially without a three-fifths tax-limit provision that would have kept it from becoming a vehicle for raising taxes. But the ferocity of Democratic opposition suggests that it has powerful anti-government potential. Now that fear of a deficit is no longer a prop for opposing tax cuts, the Left realizes red ink is its best friend (note the *New York Times* patiently explaining how it's OK for the debt to grow as fast as incomes). The arguments marshaled against the amendment—that it would compromise the FDIC, cripple government's ability to spend its way out of recessions, etc.—were just cover for the perpetual $200 billion a year in non-emergency deficit spending proposed by the President. We hope Democrats enjoy defending their profligacy in 1996. In the meantime, Republicans may have to fight the out-of-control federal budget with no wall at their back—and Mark Hatfield still chairing the Appropriations Committee.

■ About the only thing in the House Republican majority the media can bear to look upon is Congressman Steve Gunderson (R., Wis.), gay, "moderate," and Friend of Newt (if only he had more friends like that). On farm policy, though, Gunderson, who represents Wisconsin dairy farmers, turns out to be retro-troglodyte. Joining forces with Pat Roberts (Kan.), chairman of the Agriculture Committee, Gunderson declared, "We're not going to convert [food stamps] to a cash program," meaning he's not going to convert it to a program which might take cash out of farmers' pockets. Outed at last.

■ By mid March House Budget Chairman John Kasich will release the details of his $205-billion savings package designed to pay for the Contract with America's tax and spending cuts for 1996. But House Appropriations Chairman Bob Livingston has decided that there is no time like the present to get moving. Accordingly, he has developed a $17.5-billion rescission package to reduce federal spending this year. Unfortunately, part of the rescission will be offset by the $5.4 billion for California earthquake relief. So the net spending reduction for 1995 comes to $11.8 billion. But overall this is a good package, sending the right message. The rescission has passed the House in a floor vote and now awaits action from the Senate. Come on, Mr. Hatfield, join the revolution.

■ Freshman Republican Mark Neumann (Wisc.) is still on the Appropriations Committee. Barely. Neumann bucked the committee leadership by opposing a $3.3-billion defense supplemental bill because it doesn't balance over five years. The ensuing heat he took from the Speaker is understandable. But we wish the wrist-slapping would extend from members whose excessive zeal is in the right direction to those whose caution is not. Twenty-four Republicans—including four committee chairmen—voted against the Contract version of an SDI provision in the National Security bill, handing House Democrats their first major victory. "[Majority Whip] Tom DeLay asked me and others if we would change our votes," explained moderate Chris Shays (Conn.). "I told him I wouldn't and he was very nice about it." Where's meanness when you really need it?

■ What did he know and when did he know it? Depressingly for Bill Clinton, that's the kind of question people continue to ask about Henry Foster, the embattled candidate for Surgeon General. Dr. Foster, who "abhors" abortion, forgot that he had performed 39 abortions at one hospital alone. Then Dr. Foster forgot whether, when he was sterilizing severely retarded women during the 1970s, he had obtained any outside review of the operations or consent by proxy. The Clinton Administration says that, way back then in the Dark Ages, it wasn't ethically necessary to do so. Charles Krauthammer, however, reports that before Dr. Foster began his surgeries, the U.S. Government had banned the use of federal money in sterilizations performed without review or consent. Dr. Foster

"It's so cute. She refuses to go to sleep until we check under her bed for members of the Religious Right."

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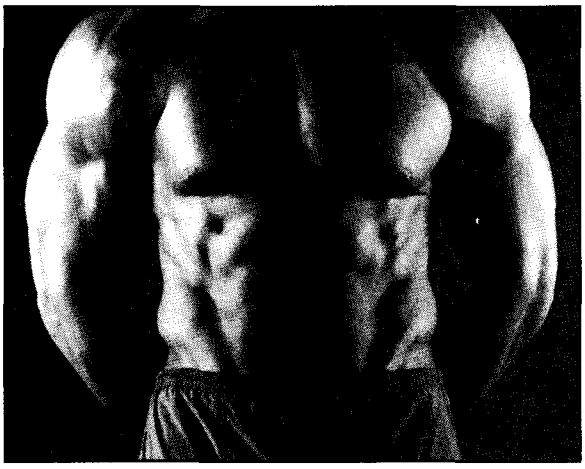

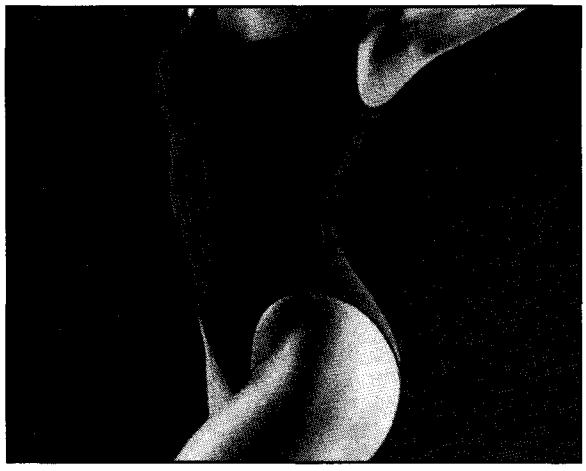

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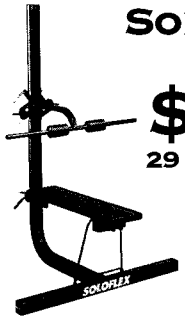

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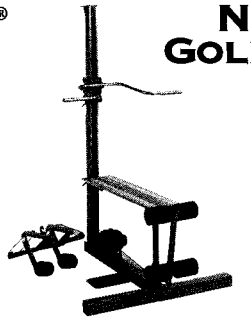

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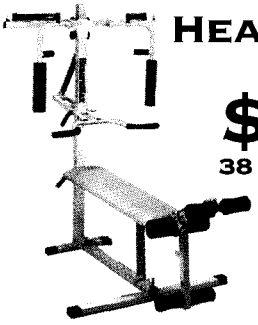

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wasn't getting federal money, but he was following ethical standards that were at least questionable. Now there is talk of a connection to the Tuskegee Project of 1932 to 1972, in which four hundred black men with syphilis were studied by government doctors. The doctors didn't tell the men they had the disease, and withheld treatment. This is the same Tuskegee Project that left-wingers adduce to show that America is cruelly indifferent to the welfare of blacks. Gary Bauer's Family Research Council has brought forward a 1981 study noting that Dr. Foster sat on a ten-member medical board that approved the experiment in 1969. Like Sergeant Schultz on *Hogan's Heroes*, Dr. Foster says he knew *nossing*, *nossing!* until the experiment had been shut down. Did he forget to go to the board meeting that day, and to read the minutes afterward? Did he attend, but then forget what happened? "The doctor will see you now" never sounded more threatening.

■ "I'm very proud to be liberal," said Barbra Streisand, eminent policy advisor, at Harvard. "Why is that so terrible today?" NATIONAL REVIEW has spent forty years answering that question and still hasn't exhausted all the reasons. It may take forty more, but we shall continue until Miss Streisand gets the message. Heck, until *Harvard* gets the message. Renew now.

■ Representative Peter King (R., N.Y.) has introduced the National Language Act of 1995, which would require citizenship ceremonies, election ballots, and federal publications to be in English, while shutting down the Office of Bilingual Education and Minority Languages Affairs. The last proposal would end a subsidy program for grievance politics; the others would encourage newcomers to learn that the Declaration of Independence does not say, *Todos los hombres son creados iguales*. If Pete King's bill passes, we will avoid the prospect of the President of Western Canada coming to Washington to speak out against San Diego secessionism.

■ It is sad that 233-year-old merchant bankers Barings PLC had to go under, victimized by a twenty-something trader, a British citizen operating in Singapore, who, without bank authorization, apparently bought nearly $29 billion of Japanese stock-market futures. Guessing wrong, young Mr. Leeson caused such massive losses as to put Barings into "administration," the British equivalent of bankruptcy. The venerable bank that financed the Napoleonic Wars and Thomas Jefferson's Louisiana Purchase is now itself up for grabs. The obvious lesson is that strong internal management controls are even more necessary than usual in today's high-flying global markets, especially early warning information systems. For, while people operating in free markets have the God-given right to make money, they also have no less a right to lose bundles of it. The Bank of England was right not to bail out Barings. After a brief initial shock, global markets have easily digested the Barings episode, again demonstrating that a healthy financial system can be maintained only by the discipline of the market-place. And that includes the occasional culling.

■ Federal District Court Judge Constance Baker Motley issued a preliminary injunction against Amtrak, forbidding it to hustle the homeless out of Penn Station in New York City. While Judge Motley's ruling allows Amtrak police to continue to arrest panhandlers, or folks bedding down for the night, she held that the railroad station was a public place; hence the public could not be expelled simply for hanging out there, or for being unsightly. That was on a Tuesday. Friday night, in that public place, Karen Biolsi, a 38-year-old Long Island woman who had come into town for dinner, was slugged in the face by Merlin Cunningham, a homeless man who had already been arrested three times this year for disorderly conduct and trespassing. Miss Biolsi got a broken nose. Mr. Cunningham got arrest number four. The conjunction is eye-catching, but Judge Motley was simply extending a 23-year-old Supreme Court decision which struck down loitering and vagrancy statutes. That ruling, by Justice William O. Douglas, wouldn't you know, cited Walt Whitman on the delights of roving. Douglas's decision has made city streets unlivable, and will make train stations so, unless the Court, or Congress, decides to legalize common sense again. Whitman wrote great things, but the Constitution wasn't one of them.

■ Labor Secretary Robert Reich claims the GOP's Contract with America was "picking the pockets of the poor to pump up the purses of the prosperous." This from someone who believes in sucking the salaries of the successful to succor the system of the socialists.

■ Just when you thought it was safe to go back into the public square, the mother of all mandates is about to crash-land in Washington. The United Nations Convention on the Rights of the Child—an international treaty soon to be considered by the Senate—is about to "globalize" (and *a fortiori* federalize) an incredible host of "rights" of children. Horror stories are already floating out of Great Britain, which signed the treaty four years ago. A UN committee overseeing the "enforcement" of the treaty is calling for legislation against British private schools that practice corporal punishment. Incarceration of 12-to-14-year-old repeat offenders for anything more than "a few days" is cited as a human-rights abuse. And the committee is on record against British parents who "chastise" their children, forcing the government to ask whether or not "a light smack" would be permissible. The treaty gives children such rights as the "right to leisure" and "non-interference with their correspondence." Does this mean they get a phone call when sent to their room? These gener-

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■ ERRATUM: James Blair has called our attention to an inadvertent error in our article "Herd Instincts" [Feb. 20]. We stated that Mr. Blair declared bankruptcy with a $15-million trading loss shortly after his pupil stopped trading. Mr. Blair did not declare bankruptcy. It was Mrs. Clinton's broker, Mr. Red Bone, who declared bankruptcy. We wish to apologize to Mr. Blair for our error.

According to the *Wall Street Journal* of June 1, 1994, Mr. Blair filed a lawsuit against Mrs. Clinton's broker for market manipulation. "The lawsuit, filed in county court here [Fayetteville, Ark.] in 1979, also alleged that Mrs. Clinton's advisor, James Blair, and his family lost more than $15 million when cattle prices collapsed in October 1979, after Mrs. Clinton had ceased trading." It was that reported $15-million loss to which we referred.

alities, the UN promises, will be resolved by a panel of ten experts, who will introduce precision, and oversee enforcement. Swell. The Senate should slam-dunk this globocratic nonsense. And put us down early for "No" on membership in the United Federation of Planets.

■ Remember those mysterious Soviet mini-submarines sneaking around Sweden's top-secret Musko Island naval base since the early 1980s? The Swedish navy used every high-tech device in its arsenal and spent $480 million to try to find the intruders, but never caught a one. It sent out commandos in rubber rafts, patrol boats, helicopters with sonar, warships, coast watchers, and divers. It planted hydrophonic buoys. It dropped depth charges without number, killing "one swan and thousands of herring." Now a Swedish Defense Ministry report to the Cabinet confesses that the intruders turned out to be playful minks. It seems that minks sound just like mini-subs to a hydrophonic device. With a navy like that, the Swedes do well to be non-aligned.

■ Mr. Kim Jong Il, heir to the North Korean fortune, made a rare public appearance to view the remains of Mr. O Jim U, hitherto No. 2 in the North Korean hierarchy (albeit a distant No. 2). It is not clear whether Kim Jong Il was paying his respects or admiring his handiwork.

■ In the last installment of a three-part series attacking capital punishment, the *New York Times* noted that murderers who kill whites are more likely to receive the death penalty than murderers who kill blacks. The article implicitly endorsed the conclusion of "civil-rights advocates" that "the judicial system places more value on the lives of whites than of blacks." But as Stanley Rothman and Stephen Powers noted in the Summer 1994 issue of *The Public Interest*, there are alternative explanations for the racial disparity. Rothman and Powers summarized an analysis of the data from the main study cited by the *Times*. Looking at murders by blacks, the analysis found that "black-on-white murders more frequently involved kidnapping and rape, mutilations, execution-style murders, tortures, and beatings." They were also much more likely to be committed in the course of an armed robbery. On the other hand, "73 per cent of the black-victim homicides were precipitated by a dispute or fight, circumstances viewed by the court as mitigating." (There were too few white-on-black murders to discern a pattern, though "mitigating circumstances seemed to outweigh aggravating.") So it is by no means clear that the victim's race in itself affects the odds that a murderer will be executed. But suppose the complaint had merit. The answer would seem to be executing more murderers of blacks. However, as the *Times* noted, since blacks are killed mostly by blacks, that would increase the ratio of blacks to whites on death row—another sort of discrimination. The only real solution, for the *Times*, is to do away with the death penalty altogether. What a surprise.

■ The commonest argument for keeping PBS publicly funded is that the kid shows alone are worth the price. The fiscal counterargument is that *Sesame Street* and *Barney* produce so much cash that they could easily survive the withdrawal of federal money. Meanwhile, the content of the shows goes unremarked. Most are determinedly multicultural. Now PBS is introducing our kids to multisexualism too. The animated characters on *Thomas the Tank Engine and Friends*—train cars with human faces and male or female identities—have just welcomed a new cast member, "Rusty," a train engine billed as "gender neutral." Introducing 4-year-olds to androgyny is a "progressive break from tradition," says a spokesman for the show. You bet, and we can't wait to see *Thomas*'s producers, in years to come, try to sell their "progressive" vision to private advertisers. Good luck, guys!

■ As almost everyone now knows, the great Olympic diver Greg Louganis competed, very successfully, in

California's Seething (Again)

Like antimacassars and grandma's brocade,
Affirmative action is starting to fade
As gents up to *here* over gender and race
Hold pens at the ready while making a face
Empurpled with passion, impatient to sign
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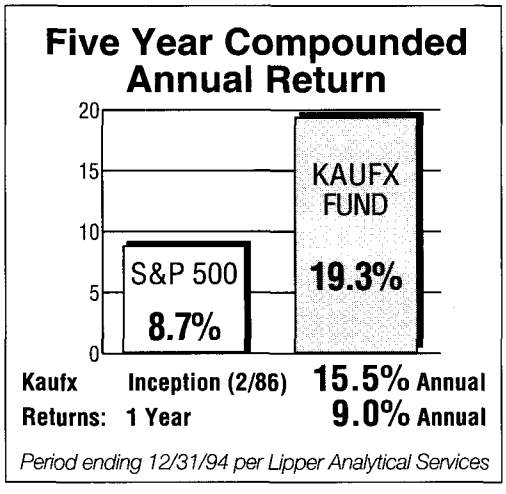

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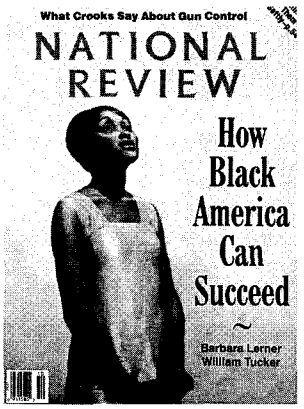

■ APOLOGY: On the cover of the March 6, 1995, issue of NATIONAL REVIEW, a painting by American artist James Chapin (1887–1975), entitled *Ruby Green Singing*, was reproduced without permission. The work, completed by the artist in 1928, is part of the permanent collection of the Norton Museum of Art, West Palm Beach, Florida, and was a bequest to the Museum by its founder, R. H. Norton.

The Norton is recognized by major art writers and critics as "Florida's finest art museum." The permanent collection of the Norton Museum of Art is one of the most notable among medium-sized museums in the United States. The Norton's collection includes major works of art by the Impressionist and European Modern Masters, as well as key pieces by the leaders in American painting and sculpture. The Norton's Asian collection is one of the most significant in the Southeastern United States.

The publishers and editors of NATIONAL REVIEW regret this error in failing to credit James Chapin or the Norton Museum of Art in the March 6, 1995, issue of the magazine.

the 1988 Games in Seoul, knowing that he was HIV positive. In one practice dive, he cracked his head on the platform, bled in the pool, and allowed the team physician, Dr. James Puffer, to stitch the wound, not knowing about the HIV and not wearing protective gloves. It does not matter that the risk of transmitting HIV through chlorinated water is minuscule. Louganis owed other competitors the chance to make their own decision about competing in that pool, and he owed the physician—whose risk was much greater—the truth about his condition. Instead he kept silent and in effect made their decisions for them, and in his own favor. Magic Johnson's teammates made their decision: against playing with him on the team. Mr. Louganis is now being lionized as a hero. He is neither that, nor a villain, but a beneficiary of the current convention that no homosexual should ever be presented in a bad light.

■ VOICES OF MODERATION (*tutti*): "In seventeenth-century Portugal, after a major earthquake devastated that country, the political leaders responded by burning a few more heretics at the stake. Today, the response to California earthquakes is to burn the United States Geological Survey," said Bruce Babbitt, unaware that it's the political landscape that is shaking, not California. "The thugs in the Senate who are talking about blocking [Henry Foster's] nomination because of abortion are in the same thuggish spectrum as people who are shooting doctors performing abortions," said Representative Jerrold Nadler, baby-killer—hey, just kidding. And Ralph Nader explained litigation reform thus: "Cash-register politicians, in a room full of corporate lobbyists, carried the day for the forces of cruelty . . ." Someone check the water cooler.

■ Mr. Clinton said last month he did too have core convictions, and would explain them one of these days, sometime, as soon the poll results were in, but seems to have forgotten about it. We'll try to remember to let you know if his pollsters find any convictions for him.

Newt's Ethics

CONGRESSIONAL Democrats have a new slogan they hope will win back their majorities: "Another ethical complaint against Newt Gingrich." It's not catchy, but Democrats—whose only new ideas are the ones they pirate from Republicans, like Dick Gephardt's not-quite-flat tax—are willing to settle for it. A crucial step in Gingrich's rise to power was his crusade against Speaker Jim Wright. So Democrats are undertaking a crusade of their own, apparently not realizing that a crucial pre-condition for its success is missing: actual misconduct. The charges against Gingrich are misinformation wrapped within insinuation bound together by opportunism.

Newt Gingrich cut a crooked book deal. Gingrich made an initial snafu with his $4.5-million HarperCollins advance. He wisely backed off it, but no ethics consideration prompted him to do so. The proposed deal was the product of a legitimate bidding war for a hot publishing property. Jim Wright's book, in contrast, was a vehicle for laundering contributions from lobbyists. As it stands now, Gingrich has no contract with HarperCollins. He promises to get House Ethics Committee approval.

Newt Gingrich runs a rogue political-action committee. Georgia Democrat Ben Jones, twice a loser to Gingrich in congressional races, filed a complaint using the Federal Election Commission alleging, in part, that GOPAC illegally supports federal candidates using funds set aside for activity at the state and local level—to which FEC reporting requirements do not apply. But in the 1992 election cycle GOPAC actually spent slightly more of its federal money on its general administration than required by law, precisely to avoid such a cross-subsidy. The other rap against GOPAC was that it wasn't disclosing the names of contributors to its state and local activities. Now it does, even though there's no legal requirement for it.

Newt Gingrich disguises partisan rantings as a col-

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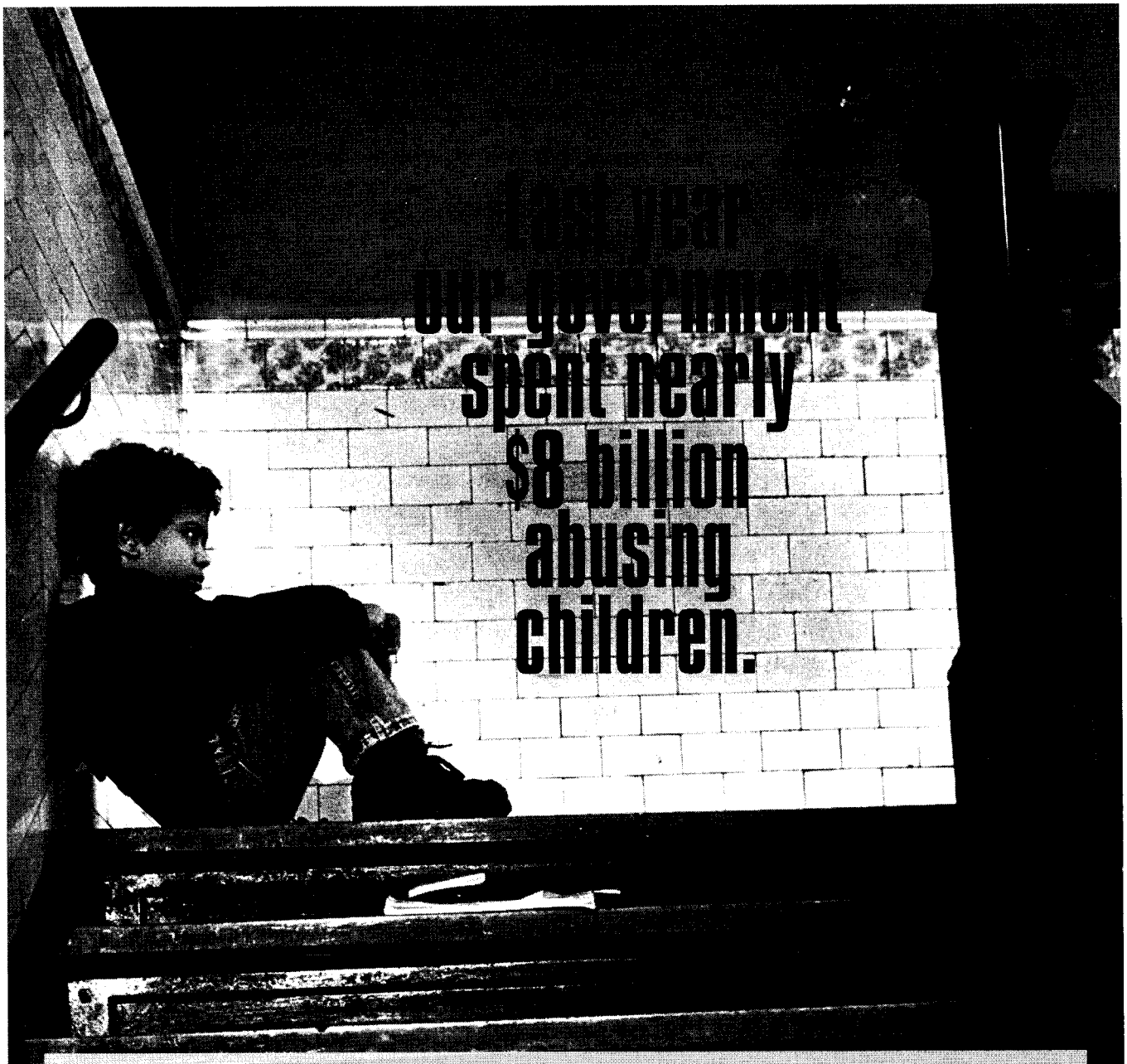

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[1]Source: American Legislative Exchange Council, *The Cost of Bilingual Education in the United States, 1994.*

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lege course. In another complaint, this one filed with the House Ethics Committee, Jones alleges it is illegal for Gingrich to fund his videotaped "Renewing American Civilization" course with tax-exempt contributions because it is partisan. Gingrich makes two partisan references during the twenty-hour course: one to Georgia's Democratic secretary of state, Max Cleland (to praise his service in Vietnam), the other to Democratic Representative John Lewis (to praise his civil-rights work). The rest of the material is, naturally, informed by Gingrich's world view. But anyone who has listened to the former history professor talk about the Tofflers or Deming or almost anything else knows his thoughts range well beyond GOP flackery. If they didn't, we doubt 15 colleges—including Berkeley, Emory, and Penn State—would offer the course for credit.

Newt Gingrich plugs corporations in his course in exchange for contributions. This allegation was the basis for a long series in the Capitol Hill newspaper *Roll Call* and has popped up in network news stories. But there's little evidence of a shakedown. Of the roughly $660,000 contributed to the course, less than $50,000 came from companies mentioned in it. And every corporation that Gingrich mentioned, save one, had long appeared in his speeches. (The exception was recommended by the Kennesaw State College faculty, who helped develop the course, and it didn't make a contribution.)

Newt Gingrich accepted a $200,000 in-kind contribution from a cable company. The latest, and perhaps silliest, complaint filed with the Ethics Committee. Mind Extension University (MEU), an affiliate of Jones Intercable, has begun running Gingrich's course. This supposedly constitutes a gift meant to influence the Speaker on cable policy. It's an absurd charge on several counts: 1) MEU airs all its courses for free—meaning its air-time is worth $0. 2) MEU, which has received about two thousand calls expressing interest since Gingrich began appearing, is benefiting more from its alleged favor to the Speaker. 3) Everybody already knows what Gingrich thinks about the cable industry: deregulate it.

Newt Gingrich threatens to make liberalism obsolete. Ah—getting warmer.

Standing by Yeltsin

Sometimes he's merely tipsy;
  Sometimes, just slightly tight.
Sometimes he has to lead a band,
  Which turns retainers white.
In Kazakhstan, he staggered.
  In Shannon, he was boiled.
In Foggy Bottom, Christopher
  Frets when he's really oiled.

W. H. VON DREELE

Without Visible Support

AMERICA'S amazing affirmative-action debate continues to amaze. For nearly thirty years, bureaucrats and judges have been steadily socializing the economy through racial and gender quotas, in defiance of law and public opinion, without so much as a peep from the politicians (see "Color Code," p. 36). Even the estimable Heritage Foundation's 1994 election briefing book completely ducked the issue. Then the Republicans win both houses of Congress. And the entire political establishment, including President Clinton and the three leading Republican candidates for President, suddenly agrees that affirmative action has gone terribly wrong and must be radically reformed. As at the Battle of Jericho, the walls come tumbling down.

Maybe. Affirmative action has shown in the past that it can defy the usual gravitational principles. If affirmative action does survive a conservative Republican Congress, it may be fatally entrenched. Here are some points to keep in mind.

First, the issue is not simply quotas. There are indeed many examples of naked and unambiguous quotas being encouraged or required by government agencies, including the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and the Department of Justice. But the fundamental problem is any public policy that accords preferences or "points" on the basis of sex or skin color. Whether or not a preference is couched expressly in terms of a quota, it is immoral and unconstitutional if it provides advantage to individuals on account of their pigmentation or genitalia. Republicans should not let Democrats, all of whom profess to oppose "quotas," to divert attention from the broader problem of race- and sex-conscious decision-making.

Second, we need to review and, if necessary, overturn both public- and private-sector policies. Obviously, it is true that much of the reverse discrimination in the business and academic communities is a function of pressure from government. But not all. Many Fortune 500 companies have adopted these policies either in response to private pressures or out of a sense of good corporate citizenship.

Third, the concept of "disparate impact" discrimination needs to be disavowed. Such discrimination does not mean that anyone has treated anyone else differently on account of race or sex. Rather, it entails statistical "discrimination" in which the races or sexes are disproportionately represented in some firm or institution. To the extent that the "correct" proportions are lacking, the burden falls upon the employer or institu-

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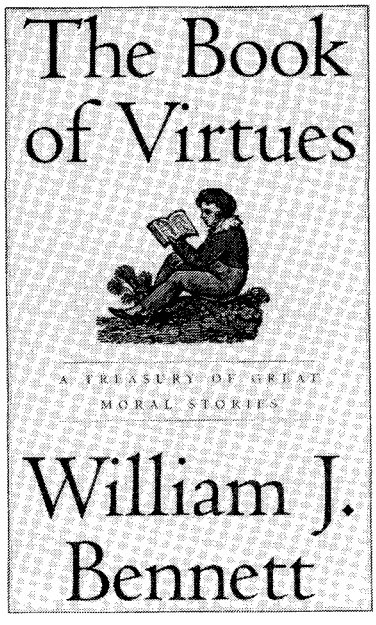

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tion to explain why this has happened. Such a definition of discrimination is the equivalent of quotas.

Fourth, preferences should not be allowed to persist—as President Clinton and some timorous Republicans have suggested they should—in the guise of providing benefits to the "economically disadvantaged" or "underprivileged." If economic disadvantage is not to be a proxy for race or sex, then it is a shifting, arbitrary, and useless category. Many Americans experience poverty and hardship at some time in their lives. How many years would be needed to qualify for preferential treatment? And why should those who have climbed out of poverty by hard work take second place?

Finally, there is an aspect that should resonate in any country club. The issue is not merely a matter of principle, but a massive question of dollars and cents. Writing in the February 15, 1993, *Forbes* magazine, Leslie Spencer and *NR* Senior Editor Peter Brimelow came up with what is still, to the great disgrace of academic economists, the only serious estimate of affirmative action's cost to the economy: some $115 billion in direct and indirect expenditures in 1991, and a GDP shortfall amounting to 4 per cent. Benefits from capital-gains tax cuts are modest in the face of this statist onslaught.

Affirmative-action policies have taken deep root within our society over a remarkably short period of time. This is precisely why Republicans must oppose them now.

Status Clinton

OPENING his counter-offensive on the Republican Congress in Ottawa, of all places—as if he were a veteran of the NFL, eking out a second career in the Canadian Football League—President Clinton declared, "Unless I miss my guess, a bill doesn't become law until I sign it or it passes over my veto. . . . I don't consider myself a titular head of state, and until there is some evidence to the contrary, you shouldn't either." President Clinton correctly understands his powers under Article I, Section 7, of the Constitution. He is entitled to be a Dr. No, and a Do-Nothing President, if he so chooses. But how odd that that should be what he now chooses to be.

Two years ago, he was promising to get the country moving again, out from under the dead hand of George Bush. The way he proposed to do that was by conceptualizing government anew. Madness, he said repeatedly, quoting a definition his wife had spotted in a medical textbook, is doing things that haven't worked over and over. He would offer the fresh look.

After two years, the country has seen what his newness amounts to. National service: Great Society pork, paying people to sit in local pols' offices and watch other people type. The crime bill: gun control and early Christmas for mayors. Health care: European social democracy, in a Rube Goldberg version designed (in vain) to fool Americans. When Clinton must, he makes quasi-Republican noises, allowing that reverse discrimination has gone too far. When he cannot do that, he lashes out at "radical right wing measures."

His taunt is more meaningful than he realizes. Bill Clinton promised to be a radical, and turned out to be business as usual. That is why the "right wing" got the chance to do the job instead.

Mexico, Saved

Rubin ran the torture room.
  Wall Street sent bouquets.
Ortiz occupied the rack
  Till the screaming phase
Won a rise in interest rates;
  Now, if they default,
Clinton gets the oil wells while
  Greenspan goes, "Gevalt!"

W. H. VON DREELE

. . . Meanwhile, in the Wings

AS THE Republican field falls into place, the one piece still in the mosaicist's box is Colin Powell. A January Times Mirror poll, breaking the electorate into ten segments, gave him the highest approval ratings of any public figure in all but two—"New Democrats" and "Seculars"—and even for these groups, his numbers sank to the high eighties. Powell benefits from the historic popularity of military men in presidential politics. He also stands in the tradition of many general-politicians, who saw themselves in nationalist and trans-partisan terms; even Andrew Jackson, the one general-president with a hard ideological edge, acquired it only after he had gotten into the presidential game.

Paradoxically, Powell's above-the-issues stance may be his strongest issue. In a number of areas, from immigration to affirmative action, Americans have been tugging at the question of what it means to be an American. Is it a benefit open to anyone who shows up? Is it a table of benefits, doled out to favored groups? Coming from a "disadvantaged" neighborhood and a "disadvantaged" race, Powell rose to the top of his profession on his merits. His biography is a rebuke to all the isms that would redefine citizenship as a basket of goodies, and it makes him the candidate best able to argue for melting-pot Americanism without being suspected of racism or nativism.

Rumor asserts that Powell will announce, as a Re-

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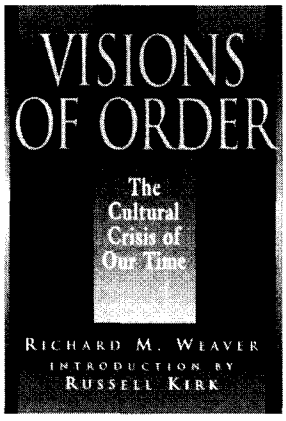

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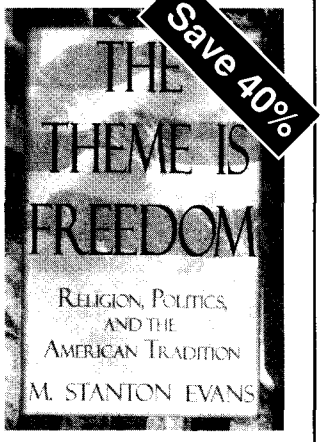

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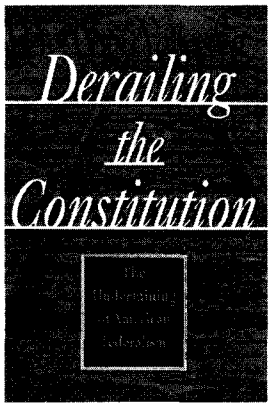

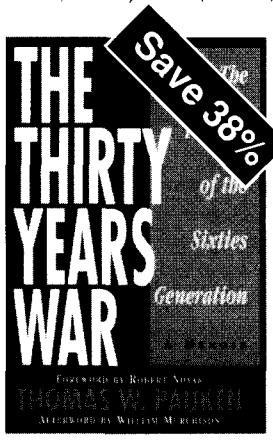

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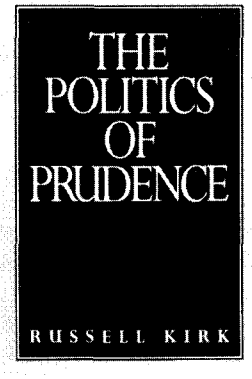

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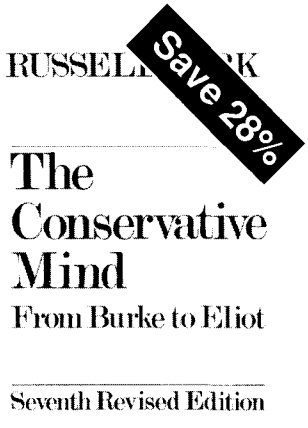

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On to '96

NINE Republican presidential aspirants spoke two weeks ago to 1,600 of the party faithful in Manchester, New Hampshire, in what amounted to the opening round of the 1996 race. Robert Dole came and left as the front-runner, while Phil Gramm and Lamar Alexander both gained some ground. Pat Buchanan and Alan Keyes staked out strong positions on the cultural and social Right. (Keyes: "We don't have money problems, we have moral problems." Buchanan: "This country was founded by religious nuts carrying guns.") But they did not really connect with the largely pro-choice and socially moderate crowd. As for the others, they made no discernible impact. Early polls show Dole with about 40 per cent, Buchanan and Gramm with 10 per cent, and Alexander with only 3 per cent.

Some polls show Colin Powell with as much as 15 per cent support. Since General Powell has not yet declared which political office or even political party he aspires to, his double-digit numbers probably signal a desire by New Hampshireites to find a candidate who is none of the above. This is why Governor Steve Merrill, given little notice by the national media, may have been the most important person on the dais.

In New Hampshire primaries the governor's organization is frequently the key to victory. This was certainly the case with John Sununu's full-speed-ahead backing of George Bush in 1988, and with Governor Sherman Adams's 1952 support of Dwight Eisenhower.

And Merrill is a strong governor. Recently elected to his second term with a record 70 per cent majority, he describes himself as "a supply-sider who's proved that it works." During his first term he cut taxes on corporate profits, telecommunications, and real-estate transfers. As tax revenues went up, the state's unemployment rate fell from 8.1 per cent to 3.9 per cent. He also cut state spending in his 1994 budget.

"On economic issues New Hampshire is a Gramm-type state; people here love a conservative who won't blink," Merrill told me in a phone interview. But senior advisors to Merrill have heard the governor grouse that the Texas senator has a tin ear when it comes to listening to others' advice.

Gramm's leading supporter in the state is Senator Robert Smith. "Phil is the kind of conservative who will be firmly confrontational if that's what is necessary to get the budget balanced," Smith says. "We would now have some semblance of Clinton's health-care plan were it not for Phil Gramm."

Robert Dole is drawing the biggest crowds so far, pulling in over three hundred people at some town meetings, where in past years he couldn't get thirty to attend. He has former Sununu aide Dave Carney as his campaign manager, and former Senator Warren Rudman is a visible senior advisor. However, Sununu does not have the political clout he once had, and the Rudman association bolsters conservative fears that Dole is still a moderate pro-tax Republican.

Dole's speech at the state committee dinner was weak. He read off a list of Contract with America proposals without conviction, as if to say, I am for the Contract because I know you are for it. As for why he is running for President, Dole said: "Maybe there's one more call to serve, one more mission for my generation." However, while no one doubts the World War II veteran's loyalty, patriotism and experience with foreign affairs, "one more mission" isn't much of a message.

Gramm's message—"I was conservative before conservatism was cool"—resonated much more with the audience of young party activists. While the senior Texas senator sees himself as Reagan's heir, Pat Buchanan intends to take both him and Dole to task for their yes votes on Bush's 1990 tax increase (Gramm actually voted yes and then switched to no), the Clean Air and Water Act, and the Americans with Disabilities Act, and their support for the recent Mexican bailout package. Alexander, as he frequently reminds people, never served in Congress. But his populist outside-the-Beltway case is diminished by his uninspiring term as Bush's secretary of education, when he did not push for school vouchers, or his terms as Tennessee governor, when he raised taxes.

Indeed, while each of the Big Three claims the conservative mantle, the general sense among key party leaders in the state is that each has an incomplete message. "There were no optimistic speeches from the likes of a Kemp or a Reagan," said senior Senator Judd Gregg. Nor did anyone mention the phrase "economic growth." And only Alexander talked about cutting the capital-gains tax, or any other taxes for that matter.

Right now the thrust of Republican policy is to shrink government. This is long overdue. The American electorate will need to be told convincingly, however, why budget cutting will improve the economy and remedy social decay, why the GOP intends to transform federal policies away from welfare dependency and toward personal responsibility, and why this approach is truly compassionate. The GOP message is still too harsh, too austere. Especially if the economy shows signs of a slump, which is increasingly likely, the next election may be fought over growth rather than government downsizing. None of the leading candidates has yet communicated a vision of both moral and economic growth. Governor Merrill is therefore right to hold back his endorsement until the summer. By then we might have better-crafted messages, or perhaps different candidates.

—LAWRENCE KUDLOW

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publican, in the fall. As soon as he does, his intentions will have to be modified somewhat, even as his numbers will change. Of all the questions interest groups and reporters will ask him, abortion will be the thorniest. The Times Mirror poll gave him a 94 per cent approval rating among "Moralists." If, like Clinton in 1992, he declared that he wanted abortion to be "rare," and if, unlike Clinton, he meant it, could he hold those numbers? We will probably get to see.

The Common Defense

IN mid February, the House passed a version of HR-7, the "National Security Revitalization Act" portion of the Contract with America. The bill would prohibit the placing of U.S. troops under UN command, cut the U.S. share of UN peacekeeping costs from 32 per cent to 20 per cent, put the Central European democracies on a fast track to NATO membership, and set up a bipartisan advisory commission to assess the nation's defense needs in a still-dangerous world. The margin of House passage (241 to 181) came despite a hysterical Administration campaign denouncing HR-7 as isolationist, destructive of our foreign policy, a menace to the free world, and the end of civilization as we know it.

NR does not usually like restrictions on presidential authority in foreign affairs. But neither can *NR* recall any Republican President who ordered U.S. troops into interventions as hare-brained as Mr. Clinton's, all in the name of humanitarianism. Republican Presidents usually have a firmer grip on the concept of the American national interest. Thus, the legislated restrictions would not do great harm. Since the Senate is likely to dilute some of these provisions, it was essential that the House speak with a clear voice, expressing the country's dismay at Mr. Clinton's adventurism.

Celebration is premature, however. One problem is the alarming assertion by Speaker Gingrich that defense spending should be frozen for five years. This would mean continued cuts in real terms—a bald contradiction of the Contract's pledge to "revital[ize]" our defense. This mistake should not be repeated in this year's defense authorization and appropriations.

The House Republicans dropped the ball in another area, too. Thanks to defecting moderates—including some committee chairmen—they were unable to pass a Contract provision requiring work to begin on a nationwide system of strategic anti-missile defenses. The game isn't over, fortunately. Both in the Senate and in the defense authorization and appropriations process, there are important battles to be fought for a nationwide missile defense and an effective defense against short-range theater ballistic missiles. The Administration says it favors theater defenses, but, obsessed with the ABM Treaty, it would impose restraints (a ban on space systems; limits on intercept speed) that would undermine our defense against the sophisticated missiles that Third World thugs will probably be able to field in a few years.

Mexican Hat Dance

ON February 28, the Mexican government arrested the brother of former President Carlos Salinas in connection with last summer's assassination of PRI presidential candidate Luis Donaldo Colosio. If this is the start of a genuine effort to identify and punish the murderers—and those who hired them—it is good news indeed. But as the Mexican crisis ramifies, the flaws in Washington's efforts to end it become increasingly apparent.

The first problem is geographical: why are these efforts being made in Washington, rather than Mexico City? Mexicans will henceforth hold us responsible for whatever befalls them. As they are in for a period of declining living standards, why is it advantageous that we and not their blundering government (or the International Monetary Fund) be seen as the culprit? This can only lead to anti-American feeling in a country where the average citizen has long admired the United States. Furthermore, if President Zedillo does start to make tough economic decisions, they will be seen not as courageous moves but as bowing to American pressure—a no-win situation both for us and for Zedillo.

The second Clinton mistake is to rescue people from the free market. Allowing Mexican officials to escape the consequences of their policies, and investors the results of their investments, will prevent any lessons from being learned. If future crises of this sort are avoided, it will only be because the pain of this one is remembered. Those who bought Mexican *tesobonos* instead of U.S. Savings Bonds took a risk; let them think twice next time.

The third great error is to misdiagnose Mexico's problems as solely economic. Investors did not lose confidence in Mexico one sad day after the decision to devalue; they lost it over two years of assassinations and rebellion. The Mexican government's reaction to those events was to avoid hard decisions. When President Zedillo announced on February 9 that the Zapatista rebels were criminals who were going to be arrested in a huge army sweep, and then five days later decreed an amnesty instead, he was hardly reassuring. Mexicans will say in private—though never on the telephone, and never when they are being overheard (two situations they think are identical)—that they have little faith in the Zedillo government. They view it as weak, vacillating, and irresolute, which makes it especially amusing that they think their problems will be solved for them by the Clinton Administration.

Mexico's problems require a truly tough-minded

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"Looks great—thanks a lot!"

Mexican government ready to take on whatever combination of legitimate political opposition, armed guerrillas, and drug traffickers may present itself. Such a government will have the strong support of the Mexican people, who continue to vote for law, order, and economic progress. It should have our full support as well, in finance, intelligence, and military matters. When the Mexican government acts, we should back it. But we should never allow our money to be used as a substitute for action, or as a sop to investors who guessed wrong.

Notes & Asides

■ Memo to: WFB
From: McF

Bill: Here is a honey sent to me by a niece—some courses available to students at Brown. How ever did we make it through college without the opportunity to study such subjects as African American Foremothers and Modernity? Enjoy.

Jim: I did; Schadenfreude rides again. Our readers, perhaps excepting those with children at Brown, will also enjoy.

Selected course titles excerpted from the Brown University Course Announcement, 1994–95:

Interdisciplinary
UC089 Issues of Gender in Sports
UC078 Topics in Human Sexuality
African-American Studies
AA110 Cultural Perspectives on Gender Relationships among People of African Descent
American Civilization
AC161L Black Nationalism, Black Power, and Black Militarism in the 1960s
AC161M Introduction to Lesbian & Gay Studies
AC190G The Big Picture: Contemporary Hollywood & Social Crisis
AC190W Orientals: The Representations of Orientals in American Popular Culture
AC190Z Producing Asian American Sexuality
Biology
BI19H Ask Me a Question
Comparative Literature
CL0283 Histories of the Early Modern Body: Scientia Sexualis/Ars Erotica
English
EL15B The Adventures of Robin Hood: Wild or Tame?
EL16B Essential Elizabethans: The Formation of Self in the Sixteenth Century
EL16D Poetry for Physicists
EL16K Development of American Feminist Theories
EL16N Daughters of Darkness: Lesbian Tropes
EL16R Rogues, Vagabonds, and Sturdy Beggars
EL116A Unnatural Acts and Split Britches
EL118B U.S. Third World Feminism
EL156B African American Foremothers and Modernity
EL244 The Early Modern Sexed Subject
EL221 Queer Theory
EL262 Sexual and Racial Politics of African American Women Novelists
German
GM090 Nostalgia, Sentiment, and Cruelty: The German Problem
GM166A Vampirism: From Colonization to Cross Dressing
GM166B Gays & Lesbians in Twentieth Century Germany
GM291 Women and Violence in German Literature
History
HI198C "How Do You Get a Dragon Out of Your Garden?"
HI198E The Social History of Sports in America
HI197X Pornography and Culture
Judaic Studies
JS99A Circumcision: Male and Female, Jewish and Gentile
Modern Culture and Media
MC163C Iron Johns: Power, Pain & Violence
MC163D Feminism & Poststructuralism
MC163F Mourning, Depression & Culture
MC163G Women's Television
MC166F Disney: Uncle Walt & the FBI
Philosophy
PL143 Feminist Philosophy
Theatre, Speech, Dance
TA128G Feminism and Drama
Women's Studies
WS196A Readings in Feminist Theory
WS196B Christianity, Violence, and Victimization

—WFB

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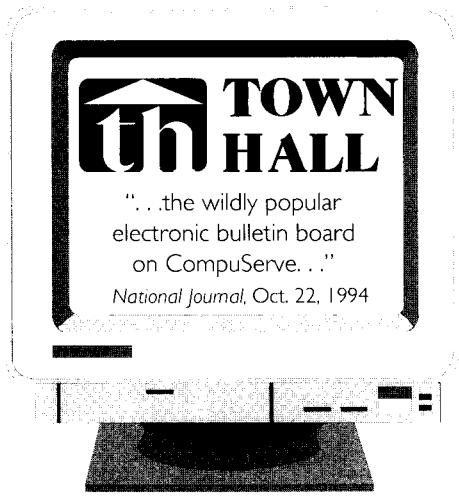

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ON THE SCENE

Quitting Quotas

RICH LOWRY

Roberto Parada

WASHINGTON, D.C.

THE Educational Equity Act could have been the crown jewel of affirmative action in California. Sponsored by Assembly Speaker Willie Brown, it declared that "outreach and recruitment efforts are not enough" to promote diversity in higher education. The act would have created an elaborate system for pushing state colleges to "approximate, by 2000, a diverse student body which mirrors the composition of recent high-school graduates, both in first-year classes and subsequent college and university graduating classes." In short, the act moved toward graduation by quota. It passed the state legislature handily in 1991.

"Then it went to the governor, who happened to be a Republican [Pete Wilson], and he vetoed it," says Glynn Custred, an anthropology professor at California State University in Haywood. "I thought . . . if we have a Democratic governor, it might pass next time. The press didn't say a word. . . . I thought, well, nobody is paying attention, it's just creeping along, it's going to take us over and we're going to be so deep into it that you're going to start to see young, white groups organize. Then I realized the initiative process is the only way to go."

Mr. Lowry is NR*'s national political reporter.*

Two years later, everyone is paying attention. The California Civil Rights Initiative (CCRI) proposed by Custred and fellow academic Thomas Wood—which would prohibit the state from discriminating in its schools, contracting, and employment—seems to have shattered affirmative action in one blow, before any of the necessary 615,000 signatures have been gathered to get the measure on the ballot.

The impact of two obscure academics whose effort might have been considered a joke (no money, no organization, no experience) derives from the same inertia that worried Custred. For two decades affirmative action simply coasted—shielded from public debate, growing without the specific sanction of law and often in defiance of it. Now that an anthropology professor and a former philosophy professor have constructed an obstacle to this momentum—a project that few prominent Republicans had the stomach for—the GOP may not only halt but begin to roll back the post-1964 civil-rights revolution.

The first step is finding out exactly what the Federal Government does to support the quota regime; it is festooned with all manner of racial preferences, most of which lack direct congressional sanction. "It's all regulations, law enforcement, and executive orders," says Clint Bolick, litigation director at the Institute for Justice. At the request of Senate Majority Leader Bob Dole, the Congressional Research Service has produced a mind-numbing 32-page list detailing federal preferences. Next will come House hearings. For starters, Representative Charles Canady (Fla.), chairman of the relevant Judiciary subcommittee, promises prompt, extensive oversight hearings on the Justice Department's Civil Rights Division. "We need to look at affirmative action in a comprehensive way," says Canady, "and there's a lot to look at."

Hearings will highlight practices like the tax break for companies selling broadcast properties to minority businesses, which the House recently voted to repeal. Such preferences make juicy targets, since they often assist minority members who are fronting for white businesses and aren't particularly needy in the first place. But Bolick and a group of former Reagan and Bush Administration officials are pushing for a broader offensive, a federal counterpart to the California initiative that would prohibit the government from using race, national origin, sex, or any other such category as "a criterion in allocating opportunities in any manner whatsoever." It's tentatively titled the Civil Rights Act of 1995. Says Bolick: "It seems to me and my colleagues that nothing less than a complete ban on racial preferences will solve the problem, that there will always be a way to circumvent anything less than a complete ban."

Localities have evaded the intent of Supreme Court decisions narrowing the grounds for contracting set-asides through "disparity studies" rigged to justify the quotas. The proposed Civil Rights Act would save them from such exertions in the future. "This would sweep up the vast majority of preference practices in the Federal Government," says Bolick, "and the government's power to force private employers or other entities to adopt such preferences."

LEFT standing would be the great bulk of affirmative action: the efforts undertaken by private employers willingly (for PR purposes) and not so willingly (to comply with laws like the Civil Rights Act of 1991). Which may be what many businesses now want. "The business interests are quite unreliable here," says Charles Fried, solicitor general in the Reagan Administration. "The fact is they've gotten used to doing business this way, and all change is unsettling to them."

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Yet Republicans, once reluctant to take on affirmative action, are striding into the brewing fight confident that the public debate has turned their way. "One of my close friends from years before I was in political life was a delegate to the Democratic convention in 1972, a McGovern delegate," says Canady. "I was talking to my friend about this issue, and he told me he agreed with what I was saying, that these programs were not right, they were unfair. I think that there's a growing consensus that what we're doing may have been well intentioned, but it has resulted in a great injustice." And affirmative action reverses the usual politics of entitlements. "It's the only entitlement issue that I know of," says Bolick, "where the opponents are far more passionate and feel their interests at stake much more than the perceived beneficiaries."

There is a danger, however, that the debate will get out of hand, becoming as divisive as the racial policies in question and discrediting efforts to overturn them. Organizers in California and at the national level plan to handle their products with care. Arnold Steinberg, a seasoned politico now helping with the California initiative, explains that the effort has rebuffed early Republican backers who wanted either to make it an electoral vehicle—insisting it appear on the ballot in November 1996, when it would boost GOP candidates—or to push it with a hard-edged campaign. Initiative organizers continue to court Democrats (offering, for instance, to have the measure appear on the March primary ballot) in the hope of making a victory seem as bipartisan as possible. Bolick says the federal effort won't be led by partisan bomb throwers either. "I would like it to be a bipartisan issue," he says, "and I think there's a really good chance of that happening."

Given the weakness of the opposition, there's little incentive to be irresponsible. "The trap the Republicans are laying for the Democrats is to reflexively defend the status quo," says Will Marshall of the moderate Democratic Leadership Council's Progressive Policy Institute (PPI). "That's a disaster. But neither can the party simply acquiesce in abolishing affirmative action." That would infuriate core Democratic constituencies. "What affirmative action turns out to do," says Joel Kotkin, formerly of the PPI, "is to supercharge the careers of middle-class minorities who are increasingly really the base of the Democratic Party." How nicely the Democrats can finesse a middle ground—perhaps by embracing need-based affirmative action—may determine the fate of the party over the next two years.

There is some hope. Hal Plotkin, a recent Democratic State Senate candidate in Silicon Valley, is on the board of the California Civil Rights Initiative. He recalls a nobler Democratic tradition: "I was looking . . . at the 1948 Democratic convention, and the big fight that a lot of Californians participated in was to include a plank for non-discrimination in the Democratic Party platform very similar to the text of the CCRI. This is at the bedrock of the Democratic Party."

But finding that bedrock again will take some digging. Representative Charles Rangel (D., N.Y.) recently wrote House Ways and Means Committee Chairman Bill Archer (R., Tex.) a four-page letter explaining why he referred to Hitler in attacking the repeal of a minority tax break. "Mr. Chairman," Rangel concluded his missive, "in America we cannot afford to be color-blind." □

Decrying Wolves

VALERIE RICHARDSON

DENVER

FOR more than six years, the U.S. Fish and Wildlife Service tinkered with proposals to bring the grey wolf back to the Rocky Mountain West. Then, shortly after the November elections, wildlife biologists suddenly decided they could wait no longer. Before anyone could say, "Repeal the Endangered Species Act," Interior Secretary Bruce Babbitt's troops were ferrying the tranquilized canines to helicopters as packs of wolf groupies howled their support.

The timing could hardly have been worse. Winter storms buffeted the Rockies, making it difficult for biologists to capture the Canadian grey wolves and dangerous for helicopters to fly them to their new homes in central Idaho and Yellowstone National Park. A lawsuit filed by ranching interests sought to halt the project, and Western lawmakers were threatening to put the wolf program on ice.

Fish and Wildlife officials barreled ahead anyway, insisting the wolves had to be brought in immediately to give them time to get used to their new habitat before mating season. In all probability, the project's newfound urgency has less to do with the wolves' libido than with the carnivores in the new Republican Congress. An offshoot of the Endangered Species Act, the animal-recovery program has long had its critics among rural Westerners. With eco-warrior Democrats in charge of the Congress, their gripes weren't widely heard. But last November's Republican sweep ushered in a posse of "wise-use" conservatives who had made it clear they would try to delay or even block the wolves' arrival.

After the Fish and Wildlife Service's *fait accompli*, furious Western lawmakers sank their teeth into Mr. Babbitt at House and Senate hearings on the wolf program. "It is my sincere belief that Secretary Babbitt abused his power by rushing the introduction of wolves back into Yellowstone," said Representative Barbara Cubin (R., Wyo.), "because he realizes the 104th Congress is going to reauthorize the Endangered Species Act and make it more representative of what it was originally intended to be." Senator Babbitt denies the charge.

Even some environmentalists will admit there are problems with the wolf-reintroduction program. In a lawsuit filed by the Sierra Club Legal Defense Fund, attorneys note that grey wolves have been migrating steadily south from Canada for years. Some have already reached Montana, and wolf packs are expected to settle in Yellowstone in about thirty years on their own initiative.

So why is the Federal Government spending upward of $13 million to helicopter-lift two hundred wolves over the next five years? Wildlife biologists say thirty years is too long. They want the predators here now to help reduce Yellowstone's burgeoning elk and bison

Mrs. Richardson is Western correspondent for the Washington Times.

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herds and to give scientists a chance to study them before they arrive naturally. Taxpayers might argue that, for $65,000 per animal, the Fish and Wildlife Service could afford to send the biologists on weekly junkets to Alberta for wolf observation.

The real reason for the wolf program seems to be the popular appeal of "charismatic megafauna," those large, dramatic species like grizzly bears and wolves that give the untamed wilderness its lure. Witness how Mr. Babbitt rhapsodized about the wolf and confessed his guilt over his family's "tragic" role in clearing the wolves out of northern Arizona in the early part of the twentieth century. "My family has been cattle and sheep ranching going on five generations in Arizona, and my grandfather and his brothers were part of the movement to eradicate the wolves from the lower 48," Mr. Babbitt said at the House hearing.

Clearing Mr. Babbitt's conscience comes at a high price, paid mostly by ranchers. In Canada, 41 per cent of livestock found dead have been killed by wolves, says Jim Streeter, policy director of the conservative National Wildlife Institute. Only a week into the reintroduction program, a repatriated Idaho wolf was shot after attacking and killing a newborn calf.

Even environmentally correct ABC News correspondent Sam Donaldson sided with the ranchers, citing his experience chasing mountain lions off his New Mexico ranch. "If wolves proliferate like they once did, the ranchers are going to be driven out of business," said Mr. Donaldson on *This Week with David Brinkley*. "Now, that may be wonderful for people who say, 'I love wolf,' but they may have to subsidize the rancher or find some other work for him."

Ranchers do have some recourse, but not much. Under the terms of the wolf-reintroduction program, they can shoot only wolves caught in the act of killing or devouring their livestock. Since cattle and sheep are often spread out across hundreds of acres, however, many ranchers stand a better chance of winning the lottery than of nabbing a wolf *in flagrante*. Even if he should be so lucky, the rancher had better hope he actually owns the ill-fated cow or sheep. Only the owner of livestock under attack may use lethal force against the reintroduced wolves. In the Idaho case, the wolf was shot by someone other than the rancher or his employees. The unknown perpetrator may well have been acting out of concern for a neighbor's cattle, but he could face up to a year in prison and $100,000 in fines if caught.

AS STIFF as the terms of the wolf-reintroduction program are, they will get stiffer if environmentalists have their way. The Sierra Club Legal Defense Fund has sued to bring the wolves under the long arm of the Endangered Species Act, which would prohibit ranchers from shooting, harming, or harassing the wolves in any way, even if they catch them brunching on their livestock. Worse, federal wildlife managers could fence off thousands of acres now used for grazing or recreation if they deemed those activities a threat to the wolves' health, shutting down ranches and throwing hundreds of people out of work. Warned Senator Alan Simpson (R., Wyo.), "I can assure you that if . . . federal land managers restrict public access to large tracts of land in parks or national forests in the name of wolf protection, there will be backlash."

The Sierra Club attorneys note that wolves who cross the border from Canada into the American Rockies are considered endangered because their numbers are so few—in Idaho and Wyoming, that is. In Canada, the grey-wolf population exceeds sixty thousand. In Alaska, the wolf population has grown so large (about seven thousand) that local officials worry the predators will decimate the region's caribou herds.

Western lawmakers will probably move to overhaul the Endangered Species Act before the worst-case scenarios can come to pass. But even Mr. Babbitt's critics admit it would be virtually impossible to track the wolves down at this point and fly them back to Canada. The only realistic option would be to hunt and shoot them from the air, which would generate intense public opposition. But if they can't remove the thirty wolves already there, Western lawmakers can see to it that no other wolves join them. As one Western Republican aide put it, "A lot of us think that funding for the wolf-reintroduction program would be a great place to cut the budget." □

Meanwhile, in Europe's Arkansas . . .

PAUL BELIEN

BRUSSELS

THE first months with Willy Claes at the helm of the Atlantic Alliance will not be remembered fondly by NATO officials. Claes, an obstinate Belgian, made a series of diplomatic blunders. Now that his past has started to haunt him, he might drag NATO along in an obscure corruption scandal.

When Claes was nominated secretary general of NATO last fall, an important condition had not been fulfilled, one to which I referred in an article I wrote for the London *Spectator* last December. Belgium, although a small country, has traditionally played an important role in European politics. When Britain, France, and Germany cannot agree on who should be given a top post in an important international organization, they often pick a Belgian because they feel he is equally close to all three. Thus, national politicians in Belgium have a greater chance of becoming international functionaries than their French, German, or British colleagues. *Hence it is crucial that Belgian politicians be properly screened.* Apparently, Willy Claes was not properly screened.

There were two reasons why the appointment of Claes was a bad thing for NATO. First, although Claes has always presented himself as a moderate Socialist, the circles around him—including his protégés, one of them the present minister of foreign affairs, Frank Vandenbroucke—were known to be radical Socialists and Trotskyists with a history of fierce anti-NATO activism. Second, Claes's name has been rumored in virtually all the major corruption scandals that have hit Belgian politics in the last 25 years. Claes has never been convicted or even formally accused of any wrongdoing. It is quite

Mr. Belien writes for the Belgian financial/economic magazine Trends *and is director of the Centre for the New Europe, a Brussels-based think tank.*

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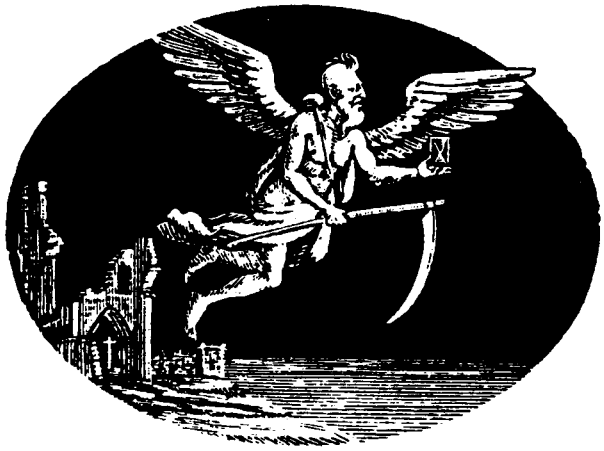
Are You Ready for The Angel of Death?



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possible that all the rumors are malicious and he is completely innocent. But the appointment to NATO changed the picture radically. If Claes has indeed been involved in corruption scandals, then he is an easy target for blackmail and would constitute an enormous liability to NATO and to the defense of the Western world.

This disturbing thought was not mentioned in my article last December. It seemed unthinkable that Western intelligence services would not thoroughly screen a candidate for NATO's top post, and unthinkable that if they had found the slightest truth in the rumors about Claes, he would stand a chance of becoming secretary general of NATO. In addition, I was afraid to refer to these rumors because, like all Belgian journalists, I feared Willy Claes. Mr. Claes has consistently sued every Belgian journalist or newspaper that dared to make even the slightest reference to his possible involvement in corruption scandals. Whenever anyone wrote anything that upset him, Mr. Claes would go to court and claim enormous damages. The entire Belgian press was afraid of him.

Last year, three leading politicians of the Socialist Party in Wallonia, the Francophone southern region of Belgium, resigned after allegations that they had been bribed by the Italian helicopter firm Agusta in December 1988. At that time, the Italian firm, which was owned by the Italian state and controlled by the Italian Socialist Party of Bettino Craxi, wished to ensure a contract worth more than $160 million for delivering helicopters to the Belgian army. In July 1991 the former president of the Walloon Socialist Party was murdered in broad daylight by an unidentified gunman, thought to be a hired killer from southern Italy. Ever since the murder, magistrates have been inquiring into the Socialist Party's finances.

In April 1994 a Flemish newspaper quoted an anonymous source that claimed Agusta had also tried to bribe Willy Claes. Claes immediately sued the newspaper and threatened to do the same to anyone who would dare to repeat the allegations. Since the newspaper could not prove the allegations, it had to back down. Although the rumors persisted, the Belgian media remained silent, until two weeks ago. When Etienne Mangé—the head of the Belgian Postal Services, who was also treasurer of the Flemish Socialist Party and a close collaborator of Willy Claes—was arrested in connection with Agusta bribes, Belgian journalists, eager to retaliate against the man who had intimidated them for so long, went after Claes.

After Belgian magistrates discovered a secret bank account in Switzerland early this year, Mangé confessed that the Flemish Socialist Party had received a gift of $160 million from Agusta via a Swiss bank account in the name of Luk Wallyn, a Belgian employee of the European Commission who was also vice secretary general of the Flemish Socialist Party. To buy the Agusta helicopters an approval was needed from the Belgian Ministry of Defense, which at the time was led by the Walloon Socialist Guy Coeme (who resigned last year over the affair), and from the Ministry of Economic Affairs, which at the time was led by the Flemish Socialist Willy Claes. Mangé told the police that he had discussed Agusta's proposal to pay money to the Flemish Socialist Party with Claes and Frank Vandenbroucke, who was the party's president at the time.

On February 19 both Claes and Vandenbroucke denied categorically that they had ever known of the existence of an Agusta proposal, let alone that they had accepted it. On February 21 Claes told the NATO ambassadors that he did not know anything about an Agusta payment to the Socialist Party. On the morning of February 22 he repeated this on Flemish radio: "I wish to formally confirm not only that I am not involved in the whole affair but also that I have never, from no one or nothing and nowhere, heard or received any suggestion or proposal whatsoever to set up any such thing. Never. We never ever even talked about this. Moreover, I repeat: neither Luk Wallyn nor Etienne Mangé ever said a word to me, not even an insinuation, about this."

But on the noon radio news, Vandenbroucke confessed that there had indeed been a meeting where Mangé had mentioned an offer by Agusta to the party. The meeting took place in Claes's office at the Ministry of Economic Affairs. Vandenbroucke said Agusta's offer was turned down and Claes and Vandenbroucke did nothing illegal. The implication was that Mangé decided to accept the Agusta money against Vandenbroucke's and Claes's wishes. Yet Vandenbroucke's statement made it clear to the Belgian public that Claes had been lying earlier that morning when he denied even knowing about the offer. When reporters contacted Claes again, he suddenly recovered his memory. On the radio news that same evening he said: "The only thing I know is what Mr. Vandenbroucke said on the radio. That I vaguely remember. We had a meeting about I do not remember what. And there Mangé told us in passing that he had heard that the Italians were going about dangling money."

In addition, a former employee of the Flemish Socialist Party who had worked at the Brussels headquarters of the European Socialist Parties in the late 1980s revealed that Claes was a good friend of Mauro Giallombardo. The latter is a dubious figure who was private secretary to Bettino Craxi and was secretary general of the European Socialist Parties in Brussels from 1982 to 1989. Giallombardo is suspected of having played an important role in the bribery case. Some of the Nordic Socialists, including Karel Van Miert, the present European commissioner, who at the time was president of the Flemish Socialist Party, had wanted to get rid of Giallombardo, but Claes had supported the Italian.

If Claes becomes increasingly entangled in the Agusta affair, he might, as NATO's secretary general, cause a serious distraction at a time when NATO can ill afford to be distracted from its own future as an alliance. Meanwhile, there is a more basic question: If Belgian journalists knew there was a chance that Claes might turn into a liability for NATO, why did the Western intelligence services not know? Or did they know but not care?

And what are we to make of the Clinton Administration's reaction? "The United States has full and complete confidence in Secretary General Claes," Vice President Al Gore declared in Brussels on February 27, at a moment when other NATO allies, such as the Netherlands, were already asking for Claes to resign at least temporarily. Perhaps Gore's boss, who is also haunted by scandals, feels some kinship for Willy Claes. After all, Claes was for many years one of the main figures in the shaping of politics in Belgium, a small, rather insignificant state with low ethical political standards—the Arkansas of Europe. □

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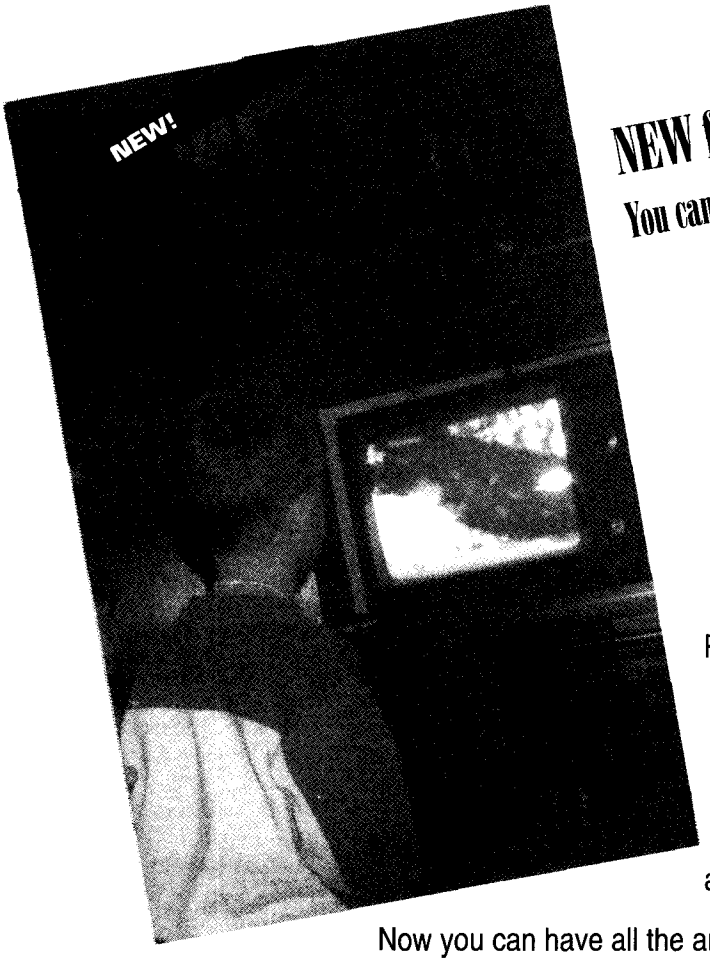

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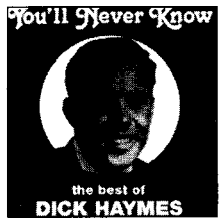

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How We Got Quotas

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Bureaucrats and judges have turned the 1964 Civil Rights Act on its head, creating a system of preferences based on race and sex. Can we restore equality before the law?

PAUL CRAIG ROBERTS & LAWRENCE M. STRATTON JR.

FORTY years after *Brown* v. *Board of Education*, the civil-rights movement has strayed far from the color-blind principles of Martin Luther King Jr. Public outrage over preferential treatment for "protected minorities" has taken the place of guilt over segregation. Americans who supported desegregation and equal rights are astonished to find themselves governed by quotas, which were prohibited by the Civil Rights Act of 1964.

In California momentum is building for a 1996 initiative, modeled on the 1964 Civil Rights Act, that would amend the state's constitution to prohibit the use of quotas by state institutions. Polls indicate that the initiative's objective of ending affirmative action is enormously popular, even in traditionally liberal bastions such as Berkeley and San Francisco. Citizens in other states are organizing to place similar measures on the ballot. The prospects for such measures are bright: surveys find that some 80 per cent of Americans oppose affirmative action in employment and education.

The hostility to race and gender preferments reflects a general sense that reverse discrimination violates fundamental norms of justice and fair play. Thomas Wood, a co-drafter of the California initiative and executive director of the California Association of Scholars, says he has been denied a teaching job because he is a white male: "I was once told by a member of a search committee at a university, 'You'd walk into this job if you were the right gender.'" Glynn Custred, a California State University anthropology professor, says he decided to join Wood in drafting the initiative because he was concerned about the destructive impact racial quotas were having on higher education, where "diversity" overshadows academic merit.

Mr. Roberts is John M. Olin Fellow and Mr. Stratton is a research fellow of the Institute for Political Economy. This article is adapted from their book, which is forthcoming from Regnery.

The California initiative has drawn support from across the political spectrum. Charles Geshekter, a teacher of African history at Chico State University and a supporter of the initiative, wrote in the August 14 *Chico Enterprise Record*: "As a liberal Democrat, I despise those who advocate preferential treatment based on genitalia or skin color. Having taught university classes on the history of European racism toward Africa for 25 years, I am appalled to watch sexist and racist demands for equality of outcomes erode the principle of affirmative equality of opportunity." University of California Regent Ward Connerly, a black businessman who supports the initiative, lamented in the August 10 *Sacramento Bee* that "we have institutionalized this preferential treatment."

The Pervasiveness of Preferences

OPPOSITION to quotas was initially unfocused, because their impact was not widely felt. The public was aware of a few celebrated cases, but they seemed to be the exception rather than the rule. This is no longer the case. Preferential treatment based on race and sex pervades private and public employment, university admissions and hiring, and the allocation of government contracts, broadcast licenses, and research grants. Consider a few examples:

—A 1989 survey by *Fortune* magazine found that only 14 per cent of Fortune 500 companies hired employees based on talent and merit alone; 18 per cent admitted that they had racial quotas, while 54 per cent used the euphemism "goals."

—A Defense Department memo cited on the November 18 broadcast of ABC's *20/20* declares, "In the future, special permission will be required for the promotion of all white men without disabilities."

—The Federal Aviation Administration officially recognizes the Council of African American Employees, the

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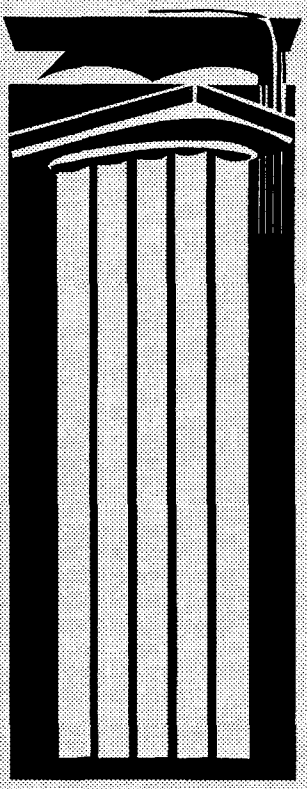

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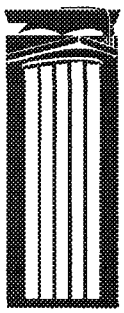

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"That's not fair!"

National Asian Pacific American Association, the Gay, Lesbian, or Bisexual Employees group, and the Native American/Alaska Native Coalition, granting them access to bulletin boards, photocopiers, electronic mail, voice mail, and rooms in government buildings for meetings on government time. By contrast, the Coalition of Federal White Aviation Employees has been seeking recognition from the FAA since 1992 without success; FAA employees are even forbidden to read the group's literature.

—In the 1994 case *Hopwood* v. *State of Texas*, U.S. District Court Judge Sam Sparks found that the constitutional rights of four white law-school applicants had been violated by quota policies at the University of Texas. However, he awarded them each only $1 in damages and refused to order them admitted ahead of protected minorities with substantially lower scores.

A case that came before the U.S. Supreme Court in January shows even more clearly how preferential policies have warped basic concepts of fairness. Randy Pech, owner of Adarand Constructors, lost in the bidding for a guard-rail construction project in Colorado's San Juan National Forest because of his skin color. Pech put in the lowest bid. However, the prime contractor was eligible for a bounty of $10,000 in taxpayers' money from the U.S. Department of Transportation for hiring minority-owned subcontractors, and the bounty was greater than the difference in the bids submitted by Pech and his competitor, a Hispanic-owned firm.

Pech filed a discrimination lawsuit. When it reached the Supreme Court, U.S. Solicitor General Drew S. Days III argued that Pech had no standing to sue, even though the U.S. Government had paid the prime contractor $10,000 to discriminate against him. Whatever the technical merits of the solicitor general's argument, it reveals the system of racial preferments that today passes for civil rights. "Protected minorities" have standing to sue without any requirement of showing that they themselves have ever suffered from an act of discrimination. Today's college-aged protected minorities have never suffered from legal discrimination, yet U.S. policy assumes they are victims and provides remedies in the form of preferments. In contrast, victims of reverse discrimination have no rememdy and no legal standing.

The political repercussions of this double standard are by no means restricted to California. In November's congressional elections, white males deserted the Democratic Party in droves, voting Republican by a margin of 63 per cent to 37 per cent. The *Wall Street Journal* has identified "angry white males" as an important new political group.

But more is at stake than the plight of white males and the relative fortunes of political parties. At issue is equality before the law and the democratic process itself. As freedom of conscience, goodwill, and persuasion are supplanted by regulatory and judicial coercion, privilege reappears in open defiance of Justice John Marshall Harlan's dictum: "There is no caste here. Our Constitution is color-blind."

Color-blindness was the guiding principle of the 1964 Civil Rights Act. The basic act was full of language prohibiting quotas, and various amendments to it defined discrimination as an intentional act, insulated professionally developed employment tests from attack for disproportionately screening out racial minorities, and restricted the Equal Employment Opportunity Commission (EEOC) from issuing any substantive interpretive regulations. Senator Hubert H. Humphrey (D., Minn.), the chief sponsor of the act, confidently declared that if anyone could find "any language which provides that an employer will have to hire on the basis of percentage or quota related to color, race, religion, or national origin, I will start eating the pages one after another, because it is not in there." In less than a decade, federal bureaucrats and judges had cast aside Congress's rejection of preferential treatment for minorities and stuffed the pages of the 1964 Civil Rights Act down Hubert Humphrey's throat.

Two Models of Discrimination

THE Civil Rights Act of 1964 undertook to put millions of employer decisions through a government filter. Such a massive intrusion into private life had not previously occurred in a free society. Congress assumed that the EEOC, the agency created by the act to run the filter, would be like the state Fair Employment Practice (FEP) commissions that had been created in some Northern states after World War II.

Civil-rights activists regarded these commissions, many of which had more power than the EEOC, as ineffective. As University of Chicago economist Gary Becker observed, however, there was an explanation for the paucity of enforcement actions by the FEP commissions: discrimination doesn't pay. In his 1957 book, *The Economics of Discrimination*, Becker showed that racial discrimination is costly to those who practice it and therefore sets in motion forces that inexorably reduce it. Meritorious employees who are underpaid and underutilized because of their race will move to firms where they

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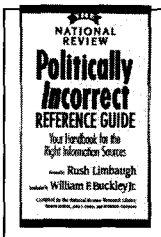

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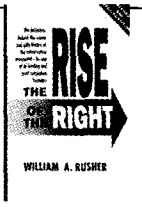

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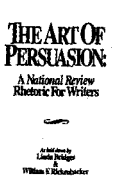

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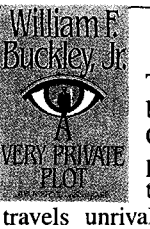

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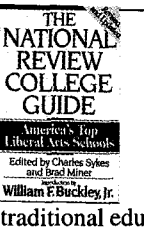
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get paid according to their contributions. An employer who hires a less qualified white because of prejudice against blacks will disadvantage himself in competition against those who hire the best employees they can find.

Indeed, scholars who studied the cases handled by FEP commissions found that the complainant's problem was usually his job qualifications, not his race. Sociologist Leon Mayhew, who studied employment-discrimination complaints filed with the Massachusetts FEP commission from 1946 to 1962, found that most complaints were based on "mere suspicion" and usually resulted in a finding that the employer had not discriminated. He pointed out that most complainants were poor and lacked job skills. Thus, ordinary, profit-oriented business decisions "regularly produce experiences that could be interpreted as discrimination." This phenomenon "permits Negroes to blame discrimination for their troubles. Hence, some complaints represent a projection of one's own deficiencies onto the outside world."

This argument did not appeal to those who wanted to achieve racial integration through government policy. Activists such as Rutgers law professor Alfred W. Blumrosen, who as the EEOC's first compliance chief became the de facto head of the commission in its formative years, rejected the complaint-based, "retail" model of FEP enforcement and envisioned a "wholesale" model attacking the entrenched legacy of discrimination. In 1965 Blumrosen wrote in the *Rutgers Law Review* that FEP commissions focused too much on individual acts of discrimination and "did not remedy the broader social problems" by reducing the disparity between black and white unemployment. Seeking to redefine discrimination in terms of statistical disparity, he dismissed other explanations of economic differences between blacks and whites, such as education and illegitimacy, as harmful "attempt[s] to shift focus." Blumrosen disdained the Civil Rights Act's definition of discrimination as an intentional act, preferring a definition that Congress had rejected. In his 1971 book, *Black Employment and the Law*, he wrote:

> If discrimination is narrowly defined, for example, by requiring an evil intent to injure minorities, then it will be difficult to find that it exists. If it does not exist, then the plight of racial and ethnic minorities must be attributable to some more generalized failures in society, in the fields of basic education, housing, family relations, and the like. The search for efforts to improve the condition of minorities must then focus in these general and difficult areas, and the answers can come only gradually as basic institutions, attitudes, customs, and practices are changed. We thus would have before us generations of time before the effects of subjugation of minorities are dissipated.
>
> But if discrimination is broadly defined, as, for example, by including all conduct which adversely affects minority group employment opportunities . . . then the prospects for rapid improvement in minority employment opportunities are greatly increased. Industrial relations systems are flexible; they are in control of defined individuals and institutions; they can be altered either by negotiation or by law. If discrimination exists within these institutions, the solution lies within our immediate grasp. It is not embedded in the complications of fundamental sociology but can be sharply influenced by intelligent, effective, and aggressive legal action.
>
> This is the optimistic view of the racial problem in our nation. This view finds discrimination at every turn where minorities are adversely affected by institutional decisions, which are subject to legal regulation. In this view, we are in control of our own history. The destruction of our society over the race question is not inevitable.

Blumrosen's Agenda

BLUMROSEN figured that a redefinition of discrimination to include anything that yielded statistical disparities between blacks and whites would force employers to give preferential treatment to blacks in pursuit of proportional representation, so as to avoid liability in class-action suits. He set out to "liberally construe" Title VII of the Civil Rights Act, which prohibited discrimination in employment, in order to advance "the needs of the minorities for whom the statute had been adopted." By promoting quotas, he could "maximize the effect of the statute on employment discrimination without going back to the Congress for more substantive legislation."

Blumrosen's EEOC colleagues kidded him that he was working on a textbook entitled *Blumrosen on Loopholes*. He took pride in his reputation for "free and easy ways with statutory construction." He later praised the agency for being like "the proverbial bumble bee" that flies "in defiance of the laws governing its operation." Blumrosen's strategy was based on his bet that "most of the problems confronting the EEOC could be solved by creative interpretation of Title VII which would be upheld by the courts, partly out of deference to the administrators." History has proved Blumrosen right.

As inside-the-Beltway lore expresses it, "Personnel is policy." Blumrosen had a free hand because Franklin Delano Roosevelt Jr., the EEOC's first chairman, spent most of his time yachting. Staffers jokingly changed the lyrics of the song "Anchors Aweigh" and sang "Franklin's Away" during his frequent absences. Roosevelt resigned before a year was out, and his successors stayed little longer. The EEOC had four chairmen in its first five years, which enhanced Blumrosen's power.

The White House Conference on Equal Employment Opportunity in August 1965 indicated what was to come. Speaker after speaker described "deeply rooted patterns of discrimination" and "under-representation" of minorities that the EEOC should counter in order to promote "equal employment opportunity." The conference report stressed on its first page that the "conferees were eager to move beyond the letter of the law to a sympathetic discussion of those affirmative actions required to make the legal requirement of equal opportunity an operating reality." Another telling line said that "it is not enough to obey the technical letter of the law; we must go a step beyond in order to assure equal em-

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HURRICANE EASTBOUND

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Edward J. Erler
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Brian Kennedy

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A NEW political storm is gathering in California. This new storm promises to make last year's heated debate over Proposition 187 seem like a gentle spring rain. The California Civil Rights Initiative (CCRI) strikes at the very heart—at least the symbolic heart—of the administrative state. It will be on the ballot some time in 1996 and, if passed, will mandate an end to all affirmative action in the State of California. The initiative has been carefully crafted to avoid legal difficulties by exempting all federally mandated affirmative action programs. From all polling indications, the initiative is extremely popular among all segments of the population. The *Los Angeles Times* poll found 73 per cent of Californians backing it.

CCRI already promises to be a defining issue in the presidential election of 1996. California, of course, is a bellwether state and no presidential candidate of either party will be able to avoid taking a stand on this important civil rights issue. Phil Gramm, for one, has already announced his strong support. Can any Democratic presidential candidate afford to be against it?—to defend racial quotas? The day is long past when such quotas can be disguised as "goals and timetables," "diversity," or some other polite sound-

(Continues on page West-4)

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WEST WORLD

■ Exclaimed Mildred Monroy, a junior at Grover Cleveland High School in Los Angeles, on "Presidents' Day": "You mean Cleveland High was named after a former President? I always thought it was named after that city in Canada." And you thought Presidents' Day was a joke.

■ At a Valentine's Day press conference in Sacramento, Willie Brown—one of the most powerful, not to mention expensively dressed, men in California for more than a decade—berated and shook his finger at a few dozen shabbily attired, barely middle-class reporters. "Everybody in here," he foamed, "has been the beneficiary of preferential treatment at my expense—at every level of your life!" Mr. Brown was not angry with his media lackeys because he is merely Speaker of the California Assembly, while they receive the privilege of being payed lowly wages to report his harangues to the masses. He was angry because he is black and they are white, and for that reason the law ought to benefit *him*. If it does not, then the law and those who support it are racist. The journalists, of course, agree with him and feel hurt that he does not give them credit for their enlightened views. In fact, the law has been benefiting the Speaker because of his race for thirty years or so, and it is the threatened end to this state of affairs—via the California Civil Rights Initiative (see "Hurricane Eastbound," page 1)—that provoked his ire. "I'm telling you," said Brown, "you've got no clue what it is like . . . every day in your life to know that this is the system you are in. . . . I'm telling you, it gnaws at you day in and day out." Nor did the Speaker let the President go un-harangued. To acquiesce in any roll-back of affirmative action, he proclaimed, "Bill Clinton would have to . . . disassociate himself from that horn that he plays. He'd have to start playing a goddamned banjo." Get used to this. Affirmative action is not going to go gently into the dustbin of history.

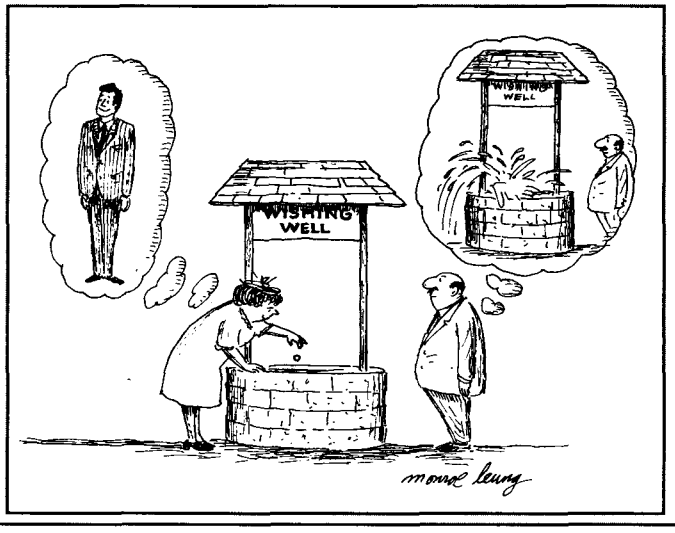
■ Speculation continues that California Governor Pete Wilson may have ambitions to win a more powerful office, but he insists he's not interested in Willie Brown's job.

■ An elderly man in Banning, California, died of a heart attack when paramedics were delayed in order to allow President Clinton's motorcade to pass by en route to a golf tournament. At the same tournament, George Bush and Gerald Ford hit spectators with golf balls, but as far as we know they didn't kill anybody.

■ Oregonians are none too happy about the recent and ongoing influx of Californians to their state. Wait until they meet former actress Pamela Githens, currently serving time in Sacramento County for operating a "dungeon" in her house, where she would shackle and beat male customers nightly. When she gets out of jail, she declares, she's off to Oregon to "do day care or something like that—something I enjoy."

■ Fully half of the 294 robberies of mail carriers and postal facilities in the U.S. in 1994 occurred in the Greater Los Angeles region. Twenty-five per cent of the carriers in one postal station serving Watts have been robbed or had their vehicles broken into in the past two years. The problem is cyclical; it occurs on the first day of each month, when the county welfare checks and federal Social Security checks arrive. The problem is so severe that more than a hundred armed postal inspectors have been stationed along selected L.A. mail routes on those days. On some especially threatened routes, mail delivery has been suspended on the first of the month. In January, hundreds of thousands of residents were requested by letter to step outside when they hear their carrier in the vicinity. For their part, carriers are instructed to honk three times when they arrive in a neighborhood. But look on the bright side: this is at least circumstantial evidence that there are still some residents of Greater Los Angeles who are not yet on the dole.

■ Sixty-two more border guards have been sent to Arizona in response to a wave of illegal crossings since the peso started falling. No word yet on how many Mexican border guards will be stationed on the other side of the border to the stop the wave of liberal crossings since Democratic fortunes started falling.



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■ A San Francisco judge is being asked by his peers to resign because of unethical conduct. It seems that the judge is guilty of openly consorting with—Boy Scouts. Indeed, his two sons are Boy Scouts and he has been observed chaperoning them on various outings. So what? Well, the Boy Scouts exclude practicing gays because, in their judgment, such gays lack the moral standards required for admission. One of the judge's openly gay colleagues on the bench argues that any association with such a group reflects badly on the whole judiciary: "It's an old axiom that birds of a feather flock together," he said. "If you belong to an organization that discriminates against gay men and lesbians . . . then one is fair in assuming that you share that particular bias." The judge, for his sake, says he will resign the bench rather than abandon the Boy Scouts, noting "the great irony of the debate: in a previous era, there were people who would have said, 'You're not fit to be a judge if you're homosexual.' Now some homosexual judges are saying, 'You're not fit to be a judge if you're involved in the Boy Scouts.' " Indeed, the politics of identity seems to be approaching its logical end point in San Francisco. When a black female was nominated to a city commission recently, another black female on the Board of Supervisors blew her stack: "I want someone who is black all the way!" shouted Willie Kennedy. The nominee, it turns out, was a lesbian, and Kennedy feared that, in distributing pork, the woman would favor her sexuality over her skin color.

■ Another mildly interesting recent development was the same Board of Supervisors' passage of a law protecting transsexuals, cross-dressers, and hermaphrodites from discrimination in employment and housing. San Francisco's Human Rights Commission is expected to enforce the law vigorously, and is already at work defining rights and privileges as they pertain to public bathrooms, showers, and locker rooms. At the moment, it appears that transsexuals and cross-dressers will be allowed to use the bathroom of their gender choice of the day. Some exceptions may be made where exposed nudity is involved, in which case the sex organs a person has by nature or acquisition must match the sex designation of the facility. No one has said why.

■ Airplanes are finally flying in and out of Denver International, which opened nearly two years late and $2 billion over budget. We hear a statue will soon be unveiled in tribute to the man whose designs inspired the airport: Rube Goldberg.

■ Angela Davis landed on the FBI's ten-most-wanted list by supplying the guns for an attempted jailbreak in 1970 that resulted in the death of a Superior Court Judge. A longtime Communist and winner of the Lenin Peace Prize in 1979, she ran for Vice President on the Communist Party ticket in 1980 and 1984. In the years since, she has been writing scholarly books —like *Women, Race, and Class*, which contains such historical footnotes as that it was the official "policy" of the U.S. military to "systematically encourage rape" in Vietnam as "an extremely effective weapon of mass terrorism." Miss Davis has also been teaching the "history of consciousness" at Santa Cruz, in the same University of California system from which Governor Ronald Reagan had insisted (successfully) that she be booted a quarter century ago. Now—perhaps intending it as an insult to the electoral majority of last November—the academic elite of the U.C. system is awarding Professor Davis its highest honor: the University of California Presidential Chair, which includes a $30,000 annual stipend on top of the $67,000 per year of California tax money she is already paid. In March, University of California officials will be in Sacramento for budget hearings, and California taxpayers will be looking to their representatives to return the insult.

■ Apple Computer is rethinking distribution of the CD-ROM *Who Built America?*, which it currently includes in its educational materials for high schools that buy Apple computers. Produced by the multimedia company Voyager—whose president, Bob Stein, is a self-described "Maoist"—*Who Built America?* is an example of decidedly *post*-modern revisionism. For instance, youngsters interested in Old West history are treated to lessons on "Male–Male Intimacy in the West," including a photo of two men sitting nude in a pond, a poem by a homosexual cowboy, and the assertion that "some men were drawn to the frontier because of their attraction to men." (There were no men back East?) We are almost sorry we ever complained about the old-fashioned revisionist history of environmental rape and plunder and careless genocide by our pioneer ancestors.

■ Old-fashioned revisionist Kevin Costner is in hot water with the very Sioux Indians he romanticized in his film *Dances with Wolves*. It seems he's building a $100 million gambling resort in Deadwood, South Dakota, which the noble Native Americans fear will cut into the revenue from their smaller casinos. We will follow this story closely to see how Mr. Costner stacks up against our raping and plundering, genocidal pioneer ancestors.

■ Now we know why the O. J. Simpson case is being called the trial of the century. That's how long it's going to last.

■ Assembly Bill 157 in California will uphold a woman's right to breast feed in any public place where she is otherwise allowed to be. Pretty soon, junior-high boys overseas will be buying *National Geographic* to check out the stories on America.

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ERLER

(Continued from page West-1)

ing euphemism. Californians seem to be in no mood for such equivocation. CCRI will not only correct a long-standing injustice, but will also provide a wedge issue that can only redound to the benefit of Republicans. It is sheer political genius, even if it wasn't intended to be.

Reaction to the initiative has been predictable, if amusing. The omnipresent Jesse Jackson, of course, sees it as overt racism: "Pete Wilson of California is liken unto Wallace of Alabama. He wants to stand in front of the schoolhouse doors." Other civil rights professionals have rushed to defend their particular affirmative action turf. Elizabeth Toledo, head of the California chapter of NOW, indulged in this bit of hyperbole: "We believe that this is the most significant attack on our rights that has come through this state in recent history." Another desperate civil rights apparatchik characterized the initiative as "Willie Horton goes to college."

The former president of Howard University and current president of the University of Texas at Dallas, Franklyn Jenifer, speaking in San Francisco before a conference of educators entitled "Building Communities of Civility and Respect," warned of violence in the event of CCRI's passage: "It's going to be hell on all your campuses," he threatened; "it will make Khalid Muhammad look like small change." "It won't just be . . . a few places," Jenifer added. "It will be every major campus that has significant proportions of minority students who were admitted with different standards of admission or [whose] average SAT scores. . . or rank in the class is lower than the majority."

Nor are prominent Democrats willing to admit the bankruptcy of a program that has for thirty years formed the centerpiece of their vision of the administrative state. Presidential Chief of Staff Leon Panetta remarked recently that "on affirmative action, we clearly oppose moving backwards." This should not, he added, "be made into a political issue." This is a very sensible desire on his part, given the role California will play in the next presidential election—and the fact that a recent *Wall Street Journal*/NBC poll found that the large majority of Americans who are opposed to affirmative action include in their ranks a full half of those who voted for Clinton in 1992.

California State Democratic Chairman Bill Press weighed in with a familiar litany: "Affirmative action has been an extraordinarily successful program that has benefited millions of women and members of ethnic minorities across this country." But even Press, an ideological liberal with impeccable credentials, has made some grudging concessions to reality. If it "is being used as a different form of discrimination, it's got to be fixed," he lamented. Yet Press still continues to hope for the impossible—that affirmative action "can be fixed without destroying the program."

Even this concession was too much for Willie Brown, the powerful (and wealthy) Speaker of the California Assembly, who lambasted Press for his weak support of affirmative action. Brown told a group of predominantly white reporters that they had all benefitted from "preferential treatment at [his] expense" throughout their lives. He also issued a stern warning to President Clinton not to jump on the anti-affirmative action bandwagon. And, as if on cue, the White House issued a statement that "the philosophical premise that the president works from is that past discrimination is something that lingers still . . . the notion that we are at a moment when we can declare a color-blind society to have arrived seems very remote."

The functionaries of the administrative state—including their allies among the civil rights professionals and in the universities and the press—found that affirmative action was a new and sophisticated way to create dependent classes of people beholden to the largess of the administrative state. At the same time, affirmative action could serve another great administrative state function—the redistribution of wealth by the use of public funds. Yet affirmative action has not significantly improved overall black employment or black income. Its greatest impact seems to have been on middle class minorities.

Edward J. Erler is a member of the California State Advisory Commission on Civil Rights.

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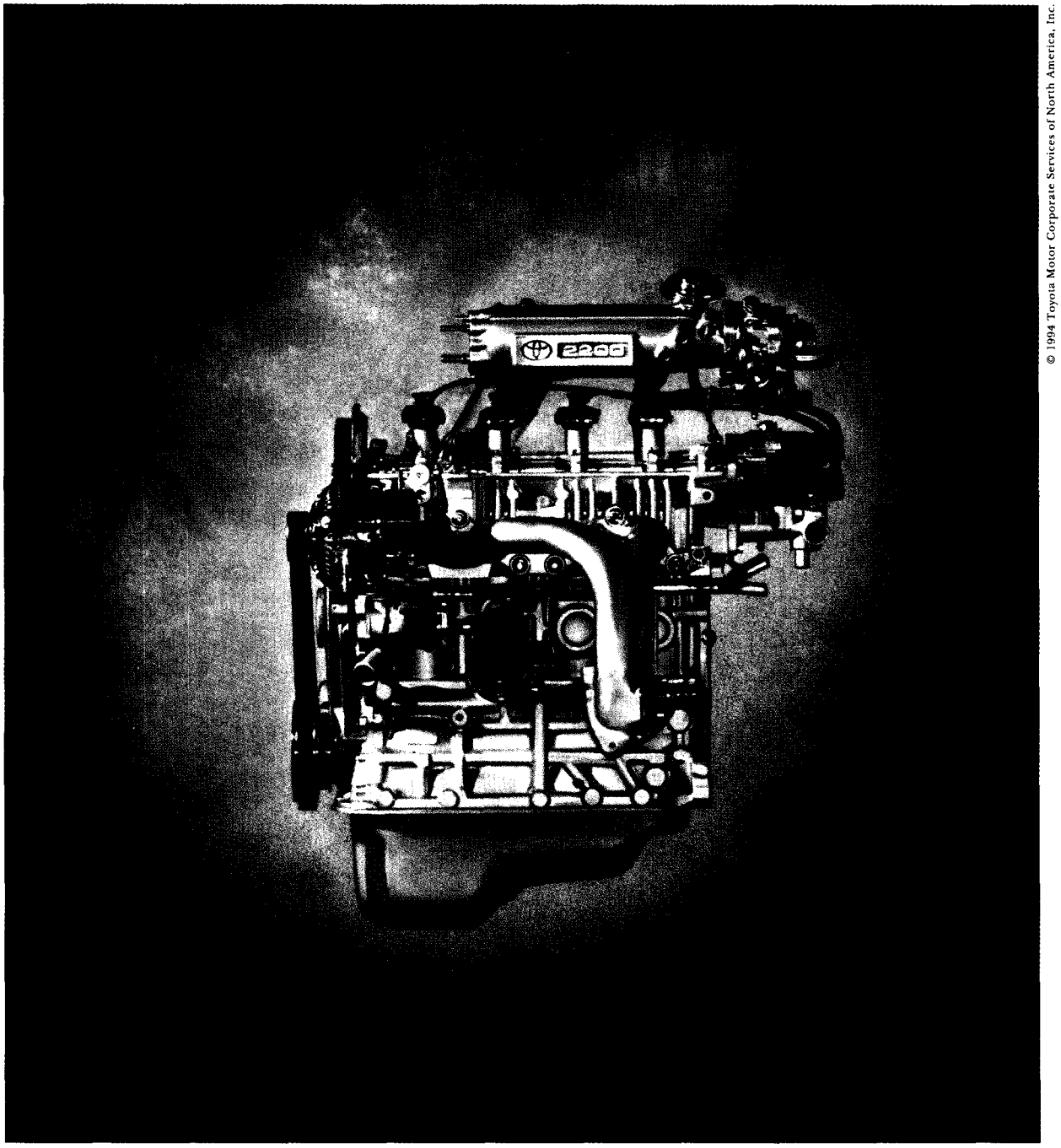

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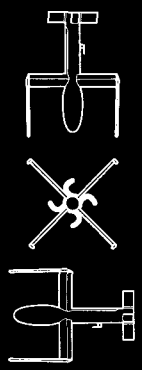

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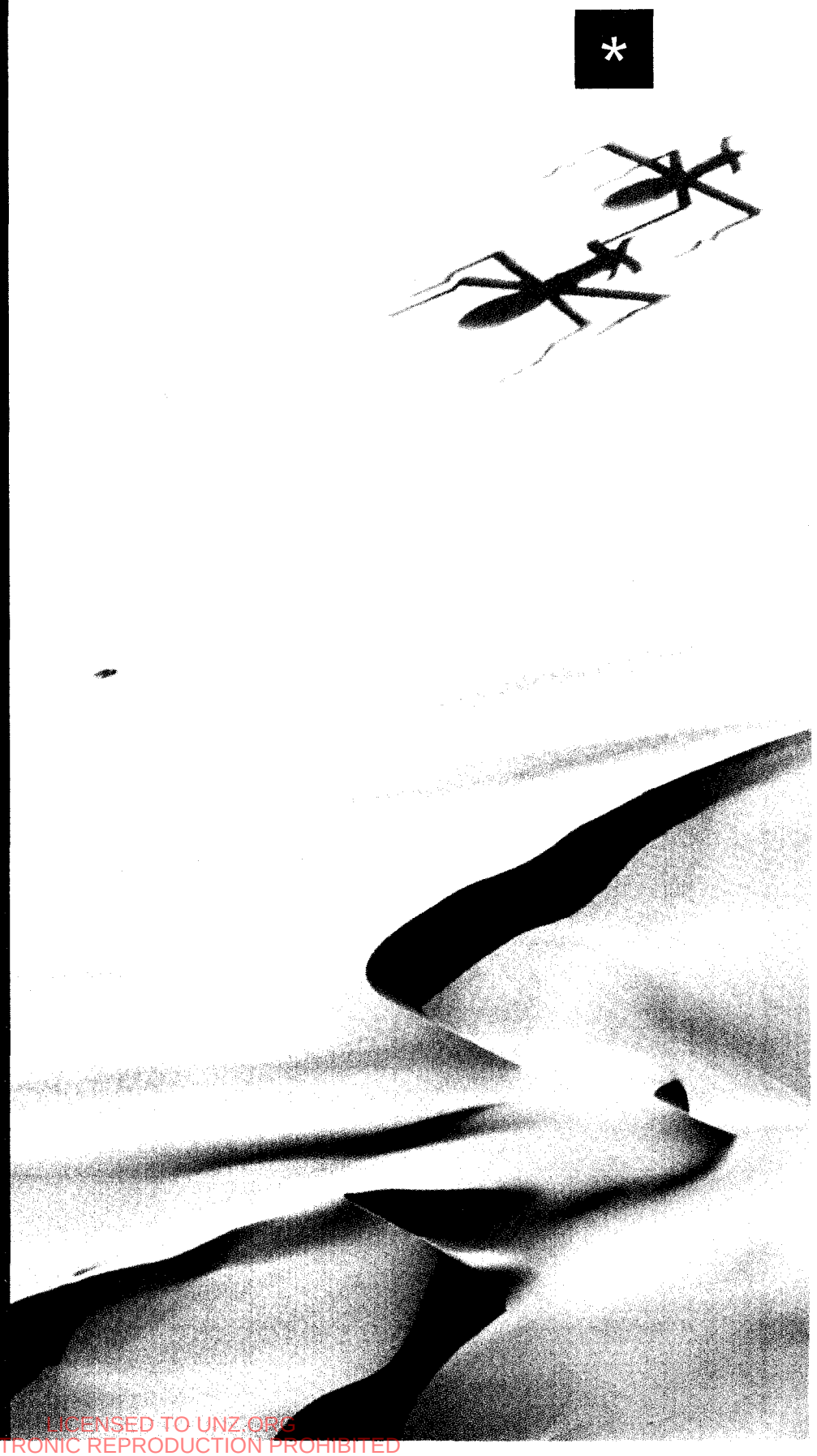

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ployment opportunity." One panel concluded that "it is possible that the letter of the law can be obeyed to the fullest extent *without* eliminating discrimination in hiring and promotion. For the legislative intent of Title VII to be met, the law will have to be obeyed in spirit as well as in letter."

The report noted that many panelists shared Blumrosen's suspicion that if the EEOC limited its activities to responding to complaints of discrimination, the agency would never "reach the extent of discriminatory patterns." Blumrosen inserted a paragraph into the report suggesting that the agency should initiate proceedings against employers even in the absence of complaints of discrimination. Underutilizers of minority workers could be identified by using "employer reports of the racial composition of the work force as a sociological 'radar net' to determine the existence of patterns of discrimination."

Blumrosen succeeded in setting up a national reporting system of racial employment statistics despite the Civil Rights Act's specific prohibition of such data collection. An amendment introduced by Senator Everett Dirksen (R., Ill.), said employers did not have to report statistics to the EEOC if they were already reporting them to local or state FEP commissions. Blumrosen later admitted that the requirement he imposed on employers to report the racial composition of their work forces was based on "a reading of the statute contrary to the plain meaning." But what was a mere statute?

"In your earthly life, I understand you were a politician who always managed to hedge the issues."

Columbia University law professor Michael Sovern predicted that the EEOC would be called on the carpet for exceeding its authority. In a study for the Twentieth Century Fund, *Legal Restraints on Racial Discrimination*, he wrote that Title VII "cannot possibly be stretched to permit the Commission to insist on the filing of reports" and predicted that Blumrosen would "encounter resistance." But no resistance materialized. As Hugh Davis Graham observed in *The Civil Rights Era*, "In 1965 Congress was distracted by debates over voting rights and Vietnam and Watts and inflation and scores of other issues more pressing than agency records."

After Blumrosen got his way in forcing employers to submit reports, the agency developed the confidence to dispense with other statutory restrictions on its mission. The EEOC saw the reporting requirement as a "calling card" that "gives credibility to an otherwise weak statute." Blumrosen knew that "with the aid of a computer," the EEOC could now get "lists of employers who, prima facie, may be underutilizing minority-group persons" and eventually force them to engage in preferential hiring of blacks.

In mid 1965 Blumrosen sent EEOC investigators to Newport News, Virginia, to solicit discrimination complaints against the Newport News Shipbuilding & Dry Dock Company, one of the world's largest shipyards, employing 22,000 workers. Knocking on doors in black neighborhoods, the investigators found 41 complainants, later narrowed down to 4. Blumrosen then successfully pressured the company, which received 75 per cent of its business from Navy contracts, to promote 3,890 of its 5,000 black workers, designate 100 blacks as supervisors, and adopt a quota system in which the ratio of black to white apprentices in a given year would match the region's ratio of blacks to whites. One shipyard worker told *Barron's* that the EEOC had done its worst to "set black against white, labor against management, and disconcert everybody."

Armed with the national reporting system's racial data and the victory at Newport News, Blumrosen and his colleagues decided to build a body of case law under Title VII to impose minority-preference schemes on employers across the country. The barrier to this strategy was Title VII itself. An internal EEOC legal memorandum concluded: "Under the literal language of Title VII, the only actions required by a covered employer are to post notices, and not to discriminate subsequent to July 2, 1965. By the explicit terms of Section 703(j), an employer is not required to redress an imbalance in his work force which is the result of past discrimination." Fearing a storm over quotas like the one that had occurred during the congressional debates on the Civil Rights Act, the EEOC ruled out trying to amend the Act itself. The memorandum instead urged the agency to rewrite the statute on its own and influence the courts to embrace the EEOC's "affirmative theory of nondiscrimination," under which compliance with Title VII requires that "Negroes are recruited, hired, transferred, and promoted in line with their ability and numbers."

The Assault on Employment Tests

TO IMPLEMENT the "affirmative theory of nondiscrimination," the EEOC decided to assault employment tests that failed blacks at a higher rate than whites. Commissioner Samuel Jackson told members of the NAACP that the EEOC had decided to interpret Title VII as banning not only racial discrimination per se but also employment practices "which prove to have a demonstrable racial effect." EEOC lawyers formed an alliance with civil-rights attorneys at the NAACP and began a litigation drive to redefine discrimination in terms of statistical effects.

Summer riots and Vietnam protests helped activists target employment tests. The Kerner Commission's report on civil disorders described employment tests as "artificial barriers to employment and promotion." The

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Thirty years ago the proponents of affirmative action assured a skeptical world that it would be only a temporary measure employed in the service of genuine equality of opportunity. Today, however, affirmative action is looked upon unabashedly by its supporters as a means of securing permanent racial class entitlements.

Inevitably, the test of racial class entitlements—and racial discrimination generally—is the concept of racial proportionality. This idea assumes that, absent discrimination, the races will freely arrange themselves in the various aspects of political and private life in exact racial proportionality. And when they do not, it is considered prima facie evidence of discrimination that must be rectified by any number of what are politely called "coercive remedies"—racial class remedies for racial class injuries. This policy, rather than seeking out actual discrimination and working to redress it, instead presumes discrimination on the part of everyone, everywhere.

EMPLOYERS and university admissions officers are required not only to redress historical wrongs, but also to "remedy" future wrongs before the fact—wrongs which they have not committed and most likely never would. Affirmative action takes the central premise of the American justice system—that one is innocent until proven guilty—and turns it on its head. It is citizens in general who are presumed guilty, and this guilt is the justification for an elaborate system of racial class entitlements.

This situation, of course, presents the alarming spectacle of a nation treating civil rights as nothing more than racial class entitlements. But any nation with the slightest concern for the lessons of history would never self-consciously allow itself to regard the rights of individuals as by-products of racial class interests.

Despite assurances by proponents that the ultimate end of such programs as affirmative action is to get beyond racial classifications, it is clear that no system that requires racial classifications for its operations can result in a decline in racialist thinking. Those who advocate such policies simply have not thought out the consequences, believing, no doubt, that a means can never become the end itself. But that is exactly what has happened to affirmative action.

For many years our constitutional jurisprudence asserted that the Constitution and the laws are color-blind. Liberal constitutionalists, once stalwart defenders of the ideal of a color-blind Constitution, today argue that that ideal is a mistake. They routinely characterize it as a "myth" or at best a "misleading metaphor." The principal reason for this turnaround is summarized by liberal activist Laurence Tribe, who writes that "judicial rejection of the 'separate but equal' talisman seems to have been accompanied by a potentially troublesome lack of sympathy for racial separateness as a possible expression of group solidarity."

Indeed, it seems to be true that the expression of racial or ethnic group solidarity does require something like the old—and once justly decried—"separate but equal" doctrine. It is not yet entirely fashionable to speak openly about the desirability of returning to "separate but equal." Attacks on the idea of a color-blind Constitution, on the other hand, are legion. Liberal jurisprudence has come full circle; it has taken on, however modified to fit contemporary parties, the very doctrine of the old segregationists.

Indeed, what else can it be called but "segregation" when applicants for positions in the Los Angeles County Fire Department are refused the chance to take the firefighter exam solely because they are white males and don't fit the affirmative action profile? The evidence of the unjust workings of affirmative action are everywhere to be seen, just as the injustice of segregation was evident in past years. If affirmative action is meant to be a remedy for past discrimination, it is simply not equitable to force those who have not been the perpetrators of discrimination to bear the burden of new discrimination. The only just, i.e., non-discriminatory, solution is to work for a color-blind Constitution that ends all discrimination.

Passage of the California Civil Rights Initiative will be a telling blow against the administrative state. It should serve as the focal point of an open and spirited debate about the character and principled foundations of civil rights. It is a debate that is sorely needed and it may be a debate that signals the beginning of a political realignment. □

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It's Character, Stupid!

CONSERVATIVE CONFUSION ON IMMIGRATION

THOMAS G. WEST

MANY well-meaning conservatives in Arizona, Texas, and elsewhere argue against emulating the letter or embracing the spirit of California's Proposition 187. They have two main arguments, one tactical and one moral.

The first is that opposing immigration in general—and welfare and free education for illegal immigrants in particular—will drive a wedge between the Republican Party and Hispanics.

The second is that these positions represent a departure from conservatism's proper belief in equal opportunity, in favor of protectionism and xenophobia. They are wrong on both counts.

First, let us dispose of the falsehood that Mexican Americans favor illegal immigration. The *Dallas Morning News* reported that 69 per cent of Hispanic Texas voters told pollsters in 1994 that they favor more federal manpower on the border to cut off illegal immigration. A majority (55 per cent) favored the central concept of California's Proposition 187, barring illegal immigrants from receiving welfare benefits. Only slight pluralities (not a majority) of those polled would allow illegals to attend public schools and receive public health care.

In California, a 1993 Field poll found that 64 per cent of Hispanics view illegal immigration as a serious problem. In another California survey, 75 per cent of Hispanics agreed that too many immigrants, both legal and illegal, are coming into the country.

Leftist activist groups such as MALDEF (Mexican American Legal Defense and Education Fund), supported by their allies in the media and in government, have an interest in convincing people that Hispanics favor large scale immigration. These groups—not spontaneous anger—are responsible for the few and relatively tame protests against Proposition 187 that have occurred across the Southwest.

When the Border Patrol cracked down on illegal border crossings in El Paso in 1993, 78 per cent of local Hispanics approved, according to the *El Paso Times*. A MALDEF spokesman said she was "disappointed" that so many Mexican Americans held that view.

MALDEF and similar groups with close ties to the Democratic Party favor unlimited immigration because they know that many illegal immigrants become dependents on the welfare state. Over the past decade, for instance, San Diego County has spent two-thirds of its budget for emergency medical services on illegal immigrants and foreign citizens. George Borjas, an economics professor at the University of California, San Diego, estimates in a recent book that the cost of government services to illegal aliens is close to $3 billion per year.

In sum: if conservatives were to consider illegal immigration solely from the point of view of attracting Mexican-American voters (not to mention an equally concerned two-thirds of all Americans), they should do everything in their power to stop it.

This takes us beyond the question of expediency to the issue of what's right. For conservatives especially, being right means being true to America's principles and traditions. But what are those principles and traditions? On this question, too, there is confusion in conservative ranks.

Libertarians have long argued that America is based on the idea of equal opportunity and individual rights, and that America should therefore favor the closest approximation to open borders that is politically feasible. Most non-libertarian conservatives have bought the logic that equates equal rights with open borders. Too often, therefore, those who oppose massive immigration, even illegal immigration, feel obliged to attack equality and the natural rights doctrine.

Thus conservative traditionalists argue that the habits, customs, and religion of America's earliest immigrants define what it is to be an American. The number of latter-day immigrants must therefore be relatively small, so that the larger culture can absorb or assimilate these newcomers and turn them into strong, independent, self-restrained, self-governing citizens. The idea of individual rights endangers this cultural need by leading to open borders, affirmative action, and the welfare state.

Libertarians are right to say that America is based on a dedication to the rights of the individual, but wrong to conclude that this dedication requires mass immigration. As for the traditionalists, their stand on immigration policy is right, but for the wrong reasons.

America is the only nation based on the idea that all human beings are created equal in possessing the rights to life, liberty, and the pursuit of happiness. That is why immigrants from all over the world can easily become American citizens, but Americans cannot easily become citizens of Japan or India or Kenya or Nigeria—nations united on the basis of race or tribe. Nevertheless, the idea of liberty and equality, understood as it generally was until the progressive era, not only allows but requires substantial restrictions on immigration.

The Declaration of Independence

"That was a great eye opener . . . I think I'll have another."

Thomas G. West is professor of politics at the University of Dallas.

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says all men are created equal. That means every people has a right to self-government. But what is a people? A people is a self-selected group that decides or consents to live together as a community. Once a people forms itself, no one has a right to join it without the consent of the people being joined. Therefore there is a right to emigrate (as several early state constitutions said), but not a right to immigrate.

All people have a right to be free. But not all people are capable of maintaining a free government. Two complementary qualities are needed: moderation or self-control, and courage or self-assertion. On self-control, James Madison wrote that if "there is not sufficient virtue among men for self-government," then "nothing less than the chains of despotism can restrain them from destroying and devouring one another." On self-assertion, he wrote that freedom can be maintained only by "the vigilant and manly spirit which actuates the people of America." Without this spirit, "the people will be prepared to tolerate anything but liberty."

FOR these reasons, most of the Founders believed that large-scale immigration should not be encouraged. In his *Notes on Virginia*, Jefferson wrote that America's principles are "a composition of the freest principles of the English constitution, with others derived from natural right and natural reason." That is, our principles are those of liberty and equality—and only that part of the British tradition which is compatible with liberty and equality. But Jefferson also knew that most immigrants would come from absolute monarchies (just as today most come from countries ruled despotically, with minimal protection of the right to acquire property): "They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness." The result: "They will infuse into [our legislation] their spirit, [and] warp and bias its direction."

Jefferson's point was not that America is simply or primarily a cultural unit, as conservative traditionalists now say. Nor did he claim that "all men are created equal" means open borders, as libertarians claim. It is the equality principle itself—specifically, the conditions required for a government based on that principle to survive—that led Jefferson to favor limits on immigration.

Imagine, as a thought experiment, that we expand our southern borders to Guatemala or Colombia tomorrow. No one would deny that America would quickly become a very different country, as the new population's attitudes and upbringing permeated the laws and customs of our society. Since 1965, when today's immigration policy began, we have effectively put into place a modified version of this border change. In huge numbers, we have admitted people from areas of the world where political liberty does not exist and, in most cases, has never existed. Furthermore, so-called illegal immigration has been quasi-legal: the national government has simply refused to enforce the law in a serious way.

Many recent immigrants have become hard-working, decent citizens. But a disproportionate number have not been willing or able to adopt the beliefs and moral conduct that sustain liberty, including individual responsibility, self restraint, and vigilance against governmental abuse of power. Nor, given the growth of the welfare state in the past three decades, have they been forced or even strongly encouraged by law or opinion to do so. Out of proportion to their numbers in the overall population, they also provide the clientele for big government, as well as a disproportionate share of the criminal population.

Except for blacks, Americans whose ancestors came to America more than a century ago have tended to vote Republican since the 1940s. Those whose forebears arrived more recently have generally voted Democratic. They became an important part of the electoral coalition that brought us the New Deal of the 1930s and the Welfare State of the 1960s. As Jefferson foresaw, the longer this trend continues, the harder it will be for America to break away from the policies and principles that are behind so many of today's social ills.

Thus is the immigration issue inextricably tied to those issues that concern all Americans, regardless of race or ethnicity—tax rates, welfare dependency, property rights, crime. It is not only politically foolish, but morally irresponsible for conservatives in the Southwest or elsewhere to shy away from it. □

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Crunching the Competition

GRANNY Smith, Jonathan, Winesap—Americans love their apples. So does most of the world—soon, perhaps, even Japan. On January 14, over 1,000 tons of Washington State apples were disgorged in Tokyo Bay, the first of over 700,000 boxes grown on 1,200 acres of land specially managed to comply with Japan's exacting agricultural restrictions. Can Washington State's symbol cope with the culture shock?

The Tokyo Bay shipment marked the culmination of more than two decades of trade wrangling. Japan's farmers had managed to maintain a tight grip on the country's import policies and consumer wallets long after the 1971 free-trade agreements which were designed to open up the apple market. They succeeded by taking advantage of the almost insurmountable quarantine restrictions implemented along with those agreements, conjuring up a succession of bogeymen—coddling moths, fireblight, and the lesser appleworm—to stymie attempts at market penetration. One after another, these baseless concerns were raised. Jim Thomas of the Washington Apple Commission notes that in the case of the lesser appleworm, "In order to test . . . we needed some samples, but the disease is so rare we had trouble finding any." In 1993, Washington apples emerged from the fray with their reputation unbruised—a good thing, given the market's next test: Japan's notoriously finicky shoppers.

The Japanese expect a lot out of their fruit—and well they should, considering the cost. One hundred dollars for a cantaloupe is not unusual; apples from the country's high maintenance farms regularly retail for six dollars each. Thus it's not surprising that Japan's per capita apple consumption is half that of the U.S.

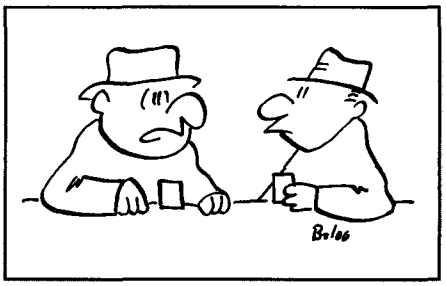
Apples are treated as a delicacy in Japan—peeled, sliced, soaked, and served with toothpicks. Never would a Japanese dream of crunching an apple, American-style. At least not until now. Priced at 30-40 per cent less than those grown in Japan, Washington apples are being touted as a low-cost snack. On Tokyo streets, promoters hold "crunch competitions," exhorting passers-by to "Come on up and bite in."

Meanwhile, far away in the quiet orchards of Japan's Aomori region, traditional farmers work small plots, taking excruciating pains to ensure the beauty of their product. First, blossoms are inspected and culled; then the resulting fruits are wrapped in cloth bags to prevent sun streaks; finally, the apples are ensconced in Styrofoam shells for shipment. This vanity comes at quite a cost, both financial and epicurean. Shielding apples from the sun prevents them from developing sugars. Even growers acknowledge that the emphasis on tradition and aesthetics sacrifices taste. "Our apples are more beautiful, but they aren't very delicious," admitted one—adding resolutely that, nevertheless, "we will continue with the old ways."

Washington exporters are preparing to pick up more and more of the resulting slack. While shipments are presently limited to the Red and Golden Delicious varieties, others are on the way—among them, ironically, Japan's own Fuji. By 1997, the Washington Apple Commission predicts that four per cent of the state's apple production will go to Japan.

There are signs it won't all be smooth sailing. Hearkening back to tactics used during the early days of U.S. rice imports—when Japan's media blared news of finding a single rat among tons of grain—Japanese headlines were ablaze recently over findings that two Golden Delicious apples tested positive for traces of thiabendazole, a fungicide used by both Japanese and American farmers. Despite the Japanese Health Ministry's word that the amounts in question were harmless, the Yakima-based Apple King packing company was cowed into pulling its inventories. "We want to be very careful not to set off some kind of Alar equivalent at this stage in the game, whatever the cost," Jim Thomas explains.

So far demand hasn't suffered. But high demand carries with it the seeds of price manipulation. Japanese retailers like the giant Daimaru initially priced U.S. apples at about 50 cents each. But almost immediately, hearty acceptance prompted a less-than-invisible hand to double prices. The Washington Apple Commission's Asia marketing manager, Brent Evans, speculates that these profits are being absorbed by what he calls Japan's "convoluted distribution system." In a December report, Hiroko Kawai, a Research Associate at the Japan Center for Economic Research, suggests that middlemen in this system add $10-15 billion a year to consumer receipts.



"Life is but a game, and everybody I meet is a coach."

'EMPTY boxes, empty promises," read the Washington Apple Growers sign posted alongside empty apple crates at the 1993 Great American Food Show in Osaka. Expecting to have produce on the market, these growers had reserved a booth. When even small samples were turned back at the port, this angry public-relations stunt rekindled debates that succeeded finally in cracking the market. And while an industry official acknowledges that "there are likely to be many more hoops . . . to jump through as we fine-tune the distribution process and discern consumer habits," those willing to play the game stand to reap large rewards in one of the last economies to match consumer buying power and demand. Indeed, for Washington apple growers, the Japanese market seems to be finally bearing fruit.

—T. KELLY ROSSITER

T. Kelly Rossiter writes on international social and business issues from the Pacific Northwest.

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Kerner Commission blamed these "artificial barriers" and the "explosive mixture which has been accumulating in our cities" on racism and concluded, "Our nation is moving toward two societies, one black, one white—separate and unequal."

The EEOC's chief psychologist, William H. Enneis, attacked "irrelevant and unreasonable standards for job applicants and upgrading of employees, [which] pose serious threats to our social and economic system. The results will be denial of employment to qualified and trainable minorities and women." Enneis said the EEOC would not "stand idle in the face of this challenge. The cult of credentialism is one of our targets," to be fought "in whatever form it occurs."

The EEOC issued guidelines in 1966 and 1970 designed to abrogate the pro-testing amendment to the Civil Rights Act introduced by Senator John Tower (R., Tex.) by defining the phrase "professionally developed ability tests" as tests that either passed blacks and whites at an equal rate or met complex "validation" requirements for "fairness" and "utility." Under the validation requirements that Enneis designed, employers had to prove that the tests measured skills they needed. The objective was to make tests so difficult to defend in court that employers would simply abandon them and hire by racial quota. Enneis testified before Congress in 1974 that he knew of only three or four test-validation studies that satisfied his guidelines. As a 1971 *Harvard Law Review* survey of developments in employment law deduced, the EEOC guidelines "appear designed to scare employers away from any objective standards which have a differential impact on minority groups, because, applied strictly, the testing requirements are impossible for many employers to follow." As a result, the guidelines "encourage many employers to use a quota system of hiring." An EEOC staffer told the *Harvard Law Review* that "the anti-preferential-hiring provisions [of Title VII] are a big zero, a nothing, a nullity. They don't mean anything at all to us."

The EEOC's attack on tests gutted not only Senator Tower's amendment but also the statutory definition of discrimination as an intentional act. The commission was well aware that it was treading on legal thin ice. A history of the EEOC during the Johnson Administration, prepared by the EEOC for the Johnson Library under the direction of Vice Chairman Luther Holcomb, detailed the EEOC's strategy of redefining discrimination and suggested that it was on a collision course with the text and legislative intent of Title VII. The history said the EEOC had rejected the "traditional meaning" of discrimination as "one of intent in the state of mind of the actor" in favor of a "constructive proof of discrimination" that would "disregard intent as crucial to the finding of an unlawful employment practice" and forbid employment criteria that have a "demonstrable racial effect without clear and convincing business motive."

Noting that this redefinition would conflict with Senator Dirksen's insertion of the word "intentional" into the statute, the history said "courts cannot assume as a matter of statutory construction that Congress meant to accomplish an empty act by the amendment" defining discrimination as intentional. The history predicted that "the Commission and the courts will be in disagreement as to the basis on which they find an unlawful employment practice" and concluded that "eventually this will call for the reconsideration of the amendment by Congress or the reconsideration of its interpretation by the Commission."

As things turned out neither the EEOC nor Congress had to reconsider the meaning of discrimination, because the courts also ignored the law. In the 1971 case *Griggs* v. *Duke Power*, the Supreme Court accepted the EEOC's rewrite of the Civil Rights Act. The opinion was written by Chief Justice Warren Burger, President Richard Nixon's first appointee to the Supreme Court. Coveting the fame of his predecessor, Earl Warren, Chief Justice Burger told his clerks that he wanted to "confuse his detractors in the press" by writing some "liberal opinions."

Blumrosen Wins His Bet

WHEN Burger declared that "the administrative interpretation of the Act by the enforcing agency is entitled to great deference," Professor Blumrosen won his bet that the EEOC's "creative interpretation of Title VII would be upheld by the courts, partly out of deference to the administrators." Burger got the acclaim he coveted. Blumrosen cheered the Chief Justice's opinion as a "sensitive, liberal interpretation of Title VII" that "has the imprimatur of permanence."

In *Griggs* the Court ignored clear statutory language and unambiguous legislative history. In fact, *Griggs* paralleled a 1964 Illinois case, *Myart* v. *Motorola*, that had troubled many of the legislators who approved the Civil Rights Act. *Myart* struck down Motorola Corporation's use of an employment test that blacks failed at a higher rate than whites. The EEOC's history for the Johnson Library noted that "many members of Congress were concerned about this issue because the court order against Motorola was handed down during the debates. The record establishes that the use of professionally developed ability tests would not be considered discriminatory." Nevertheless, the Supreme Court ruled that Duke Power Company was discriminating against blacks by requiring employees seeking promotions to have a high-school diploma or a passing grade on intelligence and mechanical-comprehension tests.

The Supreme Court agreed with the lower courts that Duke Power had not adopted the requirement with any intention to discriminate against blacks. Burger admitted that the company's policy of financing two-thirds of the cost of adult high-school education for its employees suggested good intent. But the lack of a racist motive did not make any difference to the Chief Justice. He decreed that the "absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups." Burger was mistaken when he wrote, "Con-

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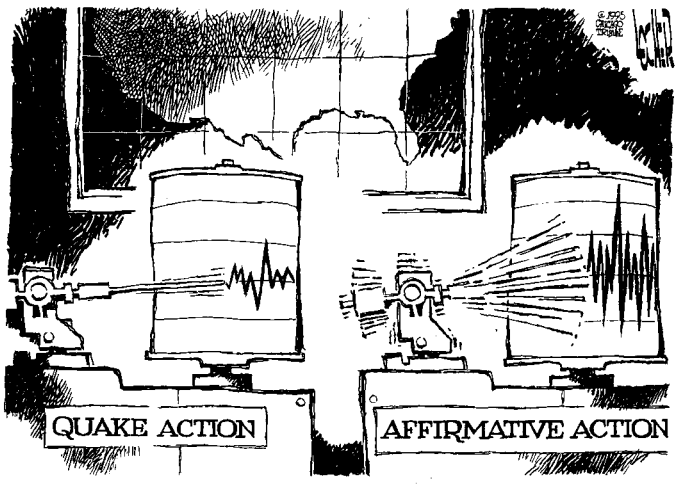
gress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." It was precisely this misinterpretation of the statute that the Dirksen Amendment was crafted to prevent.

Burger viewed the promotion requirements as "built-in-headwinds" against blacks because blacks were less likely than whites to have completed high school or to do well on aptitude tests. He cited 1960 census statistics showing that 34 per cent of white males in North Carolina had completed high school, compared to 12 per cent of black males, and EEOC findings that 58 per cent of whites passed the tests used by Duke Power, compared to 6 per cent of blacks. Blaming these disparities on segregation, Burger said that "under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." Burger destroyed job testing when he declared, "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

Burger's casuistry was to be given a name. In the 1976 book *Employment Discrimination Law*, EEOC District Counsel Barbara Lindemann Schlei and co-author Paul Grossman called the new emphasis on consequences "disparate impact" analysis. One year later, the Supreme Court used the phrase for the first time in the case *International Brotherhood of Teamsters* v. *United States*, which dealt with burdens of proof in Title VII cases attacking union seniority systems. "Proof of discriminatory motive," the Court said, "is not required under a disparate-impact theory." Henceforth, any requirement that had a disparate impact on the races, regardless of intent or the reasonableness of the requirement, constituted discrimination. In employment and promotions, unequals had to be treated as equals. The same was soon to follow in university admissions testing. Race-based privileges had found their way into law.

In *Griggs* Chief Justice Burger said employers could escape prima facie Title VII liability only if test requirements are "demonstrably a reasonable measure of job performance." Pulling a phrase out of thin air, Burger said "the touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." Burger invented a statutory hook for his ruling by asserting, falsely, that "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." It was precisely this heavy-handed intrusion into job requirements that the Tower Amendment was designed to prevent.



Burger's deference to the EEOC meant that the agency would become the national arbiter of job tests. Following *Griggs*, the agency immediately issued manuals warning employers that unless they "voluntarily" increased their minority statistics, they risked costly liability. Ultimately, it became prohibitively expensive to use job tests unless they were race-normed so that blacks could qualify with lower scores.

The Impact of Disparate Impact

IN A subsequent case interpreting *Griggs*, Justice Harry Blackmun expressed his concern that the EEOC's guidelines would lead to hiring based on race rather than merit. He warned that "a too-rigid application of the EEOC guidelines will leave the employer little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII."

By then it was too late. *Griggs* had killed four birds with one stone: Senator Tower's amendment on tests, Senator Dirksen's amendment on intent, Senator Humphrey's guarantee that the Civil Rights Act could not be used to induce quotas, and the amendment introduced by Representative Emanuel Celler (D., N.Y.) prohibiting the EEOC from issuing substantive regulatory interpretations of Title VII. The EEOC wanted quotas, and thanks to *Griggs* it would get them. "At the EEOC we believe in numbers," Chairman Clifford Alexander declared in 1968. In pursuit of its goal, the agency assumed powers it did not have. In 1972 Blumrosen boasted in the *Michigan Law Review* that the EEOC's power to issue guidelines "does not flow from any congressional grant of authority."

When Burger created what would come to be known as disparate-impact analysis he did not realize its quota implications. He thought he was just attacking "credentialism." As the holder of a law degree from an obscure night school in St. Paul, Minnesota, Burger may have been thinking of himself when he wrote that "history is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees." Surrounded by Court colleagues and clerks with prestigious Ivy League degrees, Burger might have tasted credential discrimination. He thought that the Court could take away the "headwind" of credentialism that blew against blacks without creating a privileged position for minorities.

Yet before *Griggs*, any employer who was so inclined could take the measure of prospective employees and

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make bets on people with obscure backgrounds who may not have had the best chances in life. After *Griggs*, no employer could risk hiring a white male from William Mitchell Law School in St. Paul over a black from Harvard. *Griggs* made race a critical factor in employment decisions. High-school diplomas, arrest records, wage garnishments, dishonorable military discharges, and grade-point averages all became forbidden considerations in hiring decisions, because they are criteria that could have a disparate impact on blacks. Farmers have even been sued for asking prospective farm hands whether they could use a hoe, on the grounds that blacks have a greater propensity to back problems. Perfectly sensible height and weight requirements for prison guards and police officers have also been struck down for having a disparate impact on women.

The EEOC strategy that led to *Griggs* was not created in a vacuum. Civil-rights activists needed a new cause, and preferences that would enable blacks to attain equality of result became the new goal. In January 1965, *Playboy* asked Martin Luther King Jr., "Do you feel it's fair to request a multibillion-dollar program of preferential treatment for the Negro, or for any other minority group?" King replied, "I do indeed." In 1969, the U.S. Court of Appeals for the Fifth Circuit, the same court that had initiated school busing in the name of "racial balance," cast aside the prohibition of quotas in Section 703(j) of the Civil Rights Act by upholding a court order that every other person admitted to a Louisiana labor union must be black. Responding to the argument that this order clearly violated Section 703(j), the three-judge panel simply wrote, "We disagree."

President Johnson was the most prominent proponent of the shift away from the color-blind ideal. At his commencement speech at Howard University on June 4, 1965, Johnson said the disappearance of legal segregation was not enough:

> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, "You are free to compete with all the others," and still justly believe that you have been completely fair.
>
> Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates.
>
> This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.

To back up his speech with action, Johnson issued Executive Order 11246, which put the phrase "affirmative action" into common parlance. The order required all Federal Government contractors and subcontractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

Johnson's equality-of-results rhetoric and his meta-

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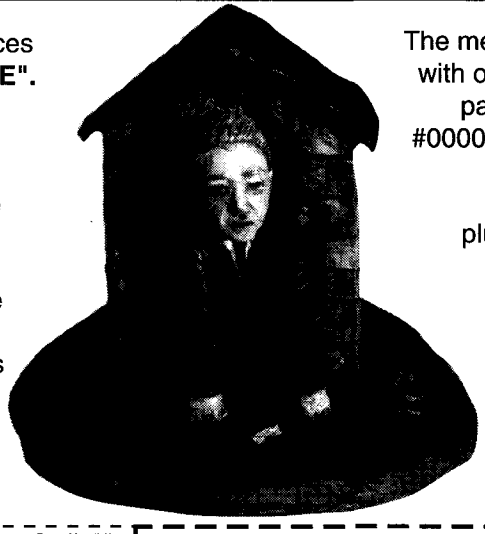

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phor of helping a hobbled runner have provided the main emotional justification for "affirmative action," but the quotas that now web federal contractors under Executive Order 11246 were not implemented by his Administration. Facing strong opposition from the Department of Defense, labor unions, members of Congress, and Comptroller General Elmer Staats, Johnson's labor secretary, Willard Wirtz, dropped his plans to impose quotas on federal construction projects in Philadelphia.

That task fell to George P. Shultz, Richard Nixon's labor secretary. Just as Burger considered *Griggs* a blow against credentialism, Shultz, a labor economist from the University of Chicago, saw the Philadelphia Plan as a way of making an end run around the Davis–Bacon Act, which inflated the cost of federal construction contracts by setting wages at "prevailing union levels." Davis–Bacon meant non-union contractors and laborers (many of whom were black) could not get government contract work. Sensitive to charges that he was hostile to civil rights, Nixon wrote in his memoirs that he accepted Shultz's proposal to revive the Philadelphia Plan in order to demonstrate to blacks "that we *do* care."

On June 27, 1969, Assistant Secretary of Labor Arthur A. Fletcher, a black former businessman who had been a professional football player, announced the Philadelphia Plan in the City of Brotherly Love. He said that while "visible, measurable goals to correct obvious imbalances are essential," the plan did not involve "rigid quotas." The *Congressional Quarterly* disagreed with Fletcher's scholastic distinction, calling the Philadelphia

"Call for backup!"

Plan a "nonnegotiable quota system."

Under the plan, the Labor Department's Office of Federal Contract Compliance (OFCC) would assess conditions in the five-county Philadelphia area and set a target percentage of minorities to be employed in several construction trades, with the aim of attaining a racially proportionate work force. Potential federal contractors would have to submit complex plans detailing goals and timetables for hiring blacks within each trade to satisfy the OFCC's "utilization" targets. Arthur Fletcher said the Philadelphia Plan "put economic flesh and bones on Dr. King's dream."

In 1971 the U.S. Court of Appeals for the Third Circuit accepted the Nixon Administration's argument that "goals and timetables" were not quotas and that, even if they were, the Civil Rights Act's ban on quotas applied to Title VII remedies, not to executive orders. The Supreme Court avoided the controversial quota issue by refusing to review the case. Although the appeals court's ruling had no force outside the Third Circuit, the Nixon Administration interpreted the Supreme Court's lack of interest as a green light. As Laurence H. Silberman, who was undersecretary of labor at the time, later wrote, the Nixon Administration went on to spread Philadelphia Plans "across the country like Johnny Appleseed." The Labor Department quickly issued Order #4, which required all federal contractors to meet "goals and timetables" to "correct any identifiable deficiencies" of minorities in their work forces. The carrot of government contracts and the stick of disparate-impact liability under *Griggs* quickly established quotas. For many corporate managers, hiring by the numbers was the only protection against discrimination lawsuits and the loss of lucrative government contracts. Contractors hired minorities to guard against the sin of "underutilization," and racial proportionality became a precondition of government largesse. Arthur Fletcher estimated that the new quota regime covered "from one-third to one-half of all U.S. workers."

The Section 703(j) prohibition of quotas in the Civil Rights Act remained in the law but meant nothing. Reverse discrimination was in. When the liberal William O. Douglas, the only remaining member of the *Brown* Court, tried to get his Supreme Court colleagues to review the case of a white who was refused admission to the Arizona bar to make room for blacks with lower bar-exam scores, he argued that "racial discrimination against a white was as unconstitutional as racial discrimination against a black." Douglas failed to persuade his fellow Justices. He reports in his autobiography that Thurgood Marshall replied: "You guys have been practicing discrimination for years. Now it is our turn."

The Spread of Quotas

ALTHOUGH the phrase "federal contractor" conjures up images of workers in hard hats busy with construction projects or weapons systems, colleges and universities are also federal contractors, receiving federal funds through research grants and financial aid to students. Following the Labor Department's lead, Nixon's Department of Health, Education, and Welfare soon required similar "goals and timetables" for faculty hiring. Before long the practice had spread to student admissions as well.

In 1974 Douglas tried to get the Court to address quotas in this area. Marco DeFunis challenged the University of Washington Law School's 20 per cent quota for blacks. The school had rejected DeFunis though his GPA and test scores surpassed those of 36 of the 37 admitted blacks. Using his powers as a Circuit Justice, Douglas stayed the Washington Supreme Court's ruling against DeFunis and ordered his admission.

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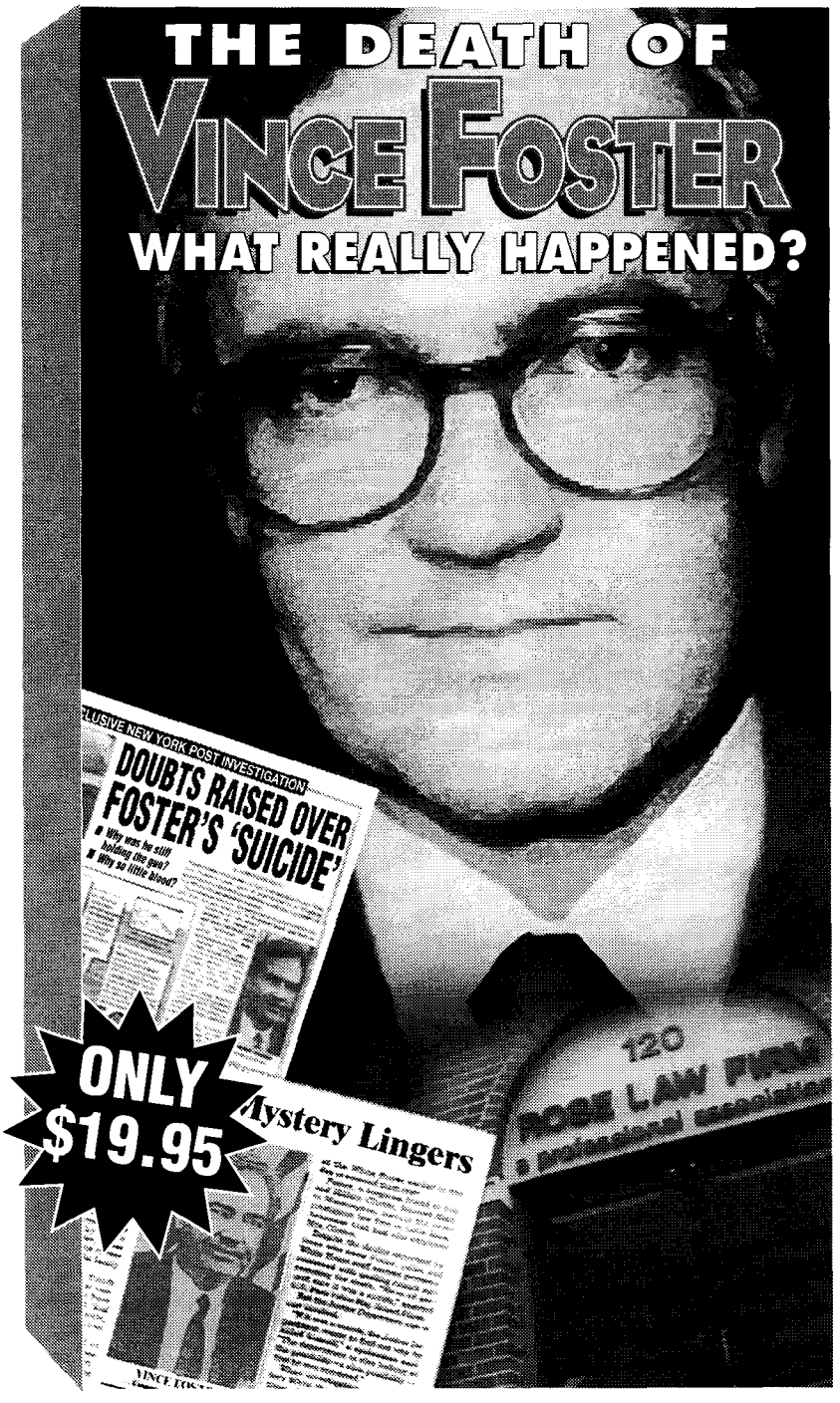

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By the time DeFunis's case came before the Supreme Court, however, he was about to receive his degree. This let the Court avoid the quota issue by declaring the case moot. Douglas dissented on the mootness ruling and addressed the case's merits. He viewed *DeFunis* just as he had *Brown*: "There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner."

But time had passed Douglas by. In Douglas's mind, discrimination was still connected with merit. DeFunis's scores showed that he met a higher objective standard than those admitted in his place. But by this time any standard that had disparate impact was ipso facto discriminatory. In the eyes of Douglas's colleagues, DeFunis was simply a beneficiary of a discriminatory standard. Douglas, who had supported the *Griggs* decision, obviously did not comprehend its implications.

The quota issue re-emerged in 1978, when Allan Bakke, a white male refused admission to the University of California Medical School, challenged the school's policy of reserving 16 per cent of its slots for minorities. Each of the accepted minorities had academic credentials inferior to Bakke's. In a 156-page opinion with 167 footnotes, the Justices reached the schizophrenic conclusion that Bakke should be admitted, but that certain skin colors could nevertheless be considered grounds for college admissions if the goal was to enhance "educational diversity."

A year later the Supreme Court ruled that companies could "voluntarily" impose quotas on themselves to avoid liability. Pressured by OFCC affirmative-action requirements and the need to forestall Title VII liability under *Griggs*, Kaiser Aluminum, like many other companies, had entered into a quota agreement with its union, the United Steelworkers of America, in 1974. The agreement stipulated that "not less than one minority employee will enter" apprentice and craft training programs "for every nonminority employee" until the percentage of minority craft workers approximated the percentage of minorities in the regions surrounding each Kaiser plant. Two seniority lists were drawn up, one white and one black, and training openings were filled alternately from the two lists.

Brian Weber, a 32-year-old white blue-collar worker who had ten years' seniority as an unskilled lab technician at Kaiser Aluminum's plant in Gramercy, Louisiana, applied for a training-program slot but was denied in favor of two blacks with less seniority. After his union denied his grievance, Weber wrote the local EEOC office requesting a copy of the 1964 Civil Rights Act. When the Civil Rights Act arrived in the mail, Weber read it through and found that it said "exactly what I thought. Everyone should be treated the same, regardless of race or sex." Encouraged by the statute's words, he filed a class-action suit representing his plant's white workers and won before district and appellate courts.

During Supreme Court oral arguments in *United Steelworkers* v. *Weber* Justice Potter Stewart quipped that the Justices had to determine whether employers may "discriminate against some white people." Justice William Brennan's answer, for a 5 to 2 majority, was an emphatic "yes." Brennan said the meaning of the 1964 Civil Rights Act could not be found in its statutory language but resided in its spirit, which Brennan had divined. He asserted that the Act's clear statutory language and the Dirksen, Tower, and Celler amendments conveyed a meaning that was the opposite of what Congress had really intended. A literal reading of Title VII, he said, would "bring about an end completely at variance with the purpose of the statute." In enacting the Civil Rights Act, Brennan continued, "Congress's primary concern" was with the plight of the Negro in our economy. Anything that helped minorities was broadly consistent with this purpose. This included racial quotas, as long as they were voluntarily adopted by companies and not required by the Federal Government under Title VII. Brennan denied that Kaiser's plan would lead to quotas: "The plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance."

Burger Has Second Thoughts

CHIEF Justice Burger had created disparate-impact analysis in his *Griggs* opinion without realizing its quota implications. Now that quotas were upon him, he found himself joining in dissent with Justice William Rehnquist. Brennan's *Weber* opinion, they said, was "Orwellian." In *Griggs*, the Court had declared that "discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." But eight years had passed, and the Civil Rights Act had been fully reconstructed. Burger and Rehnquist's alarm showed in their dissenting language: "By a tour de force reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini, the Court eludes clear statutory language, uncontradicted legislative history, and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions." The Court "introduces into Title VII a tolerance for the very evil that the law was intended to eradicate," Rehnquist said. Moreover, Brennan's reading of Section 703(j) was "outlandish" in the light of Title VII's other "flat prohibitions" against racial discrimination and is "totally belied by the Act's legislative history." Rehnquist cited a congressional interpretative memorandum clearly stating that "Title VII *does not permit* the ordering of racial quotas in businesses or unions and does not permit interferences with seniority rights of employees or union members." But Burger had set the stage for *Weber* with *Griggs*, and it was the pot calling the kettle black when he accused Brennan of amending the Civil Rights Act "to do precisely what both its sponsors and its opponents agreed the statute was not intended to do."

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Having ruled in *Weber* that reverse discrimination was "benign discrimination," the Supreme Court upheld other quota schemes in subsequent cases. In the 1980 case *Fullilove* v. *Klutznick*, the Court said a federal spending program setting aside 10 per cent of public-works money for minority businesses violated neither the Constitution's guarantee of equal protection of the laws nor the 1964 Civil Rights Act.

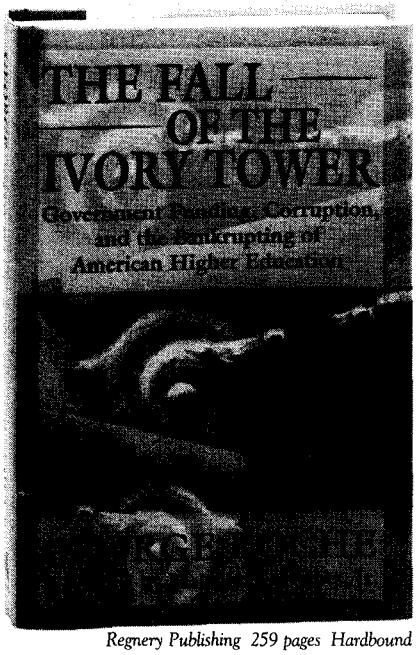
In the 1987 case *Johnson* v. *Transportation Agency, Santa Clara County*, the issue was the maleness rather than the whiteness of white males. The Court ruled that job discrimination against a white male in favor of a woman with lower performance ratings was perfectly legal under Title VII, even though the county's transportation agency had no record of prior discrimination requiring remedies. Rehnquist, Byron White, and Antonin Scalia didn't like the decision. Scalia said, "We effectively replace the goal of a discrimination-free society with the quite incompatible goal of proportionate representation by race and by sex in the workplace." He noted that civil rights had become a cynical numbers game played by politicians, lobbyists, corporate executives, lawyers, and government bureaucrats.

In 1989 there was a brief retrenchment when the Supreme Court, with its Reagan appointees, confronted the quota implications of *Griggs* and the decisions that had followed it. In *Wards Cove* v. *Atonio*, the Court ruled that statistical disparities were insufficient to establish a prima facie case of discrimination. In this case, the racial minorities who made up a majority of the unskilled work force at two Alaskan salmon canneries brought a discrimination lawsuit based on the fact that whites held a majority of skilled office positions. The suit claimed that this constituted underutilization of preferred minorities in office positions and was evidence of racial discrimination. The majority opinion, written by Justice White, rejected the discrimination claim. White noted that

> any employer who had a segment of his work force that was—for some reason—racially imbalanced, could be hauled into court and forced to engage in the expensive and time-consuming task of defending the "business necessity" of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, ensuring that no portion of his work force deviates in racial composition from the other portions thereof; this is a result that Congress expressly rejected in drafting Title VII.

A week after *Wards Cove*, the Court ruled in *Martin* v. *Wilks* that victims of reverse discrimination due to consent decrees that imposed quotas had the right to challenge the decrees in court. The Court noted that victims of reverse discrimination found their rights affected by lawsuits to which they were not parties. Citing

(Continues on page 80)



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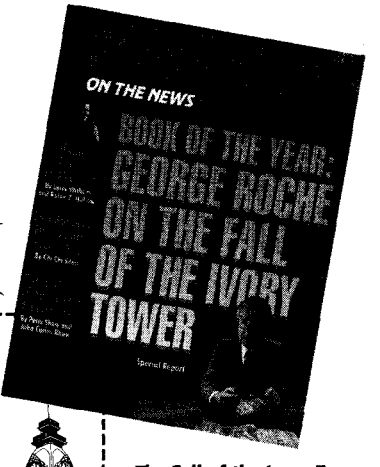

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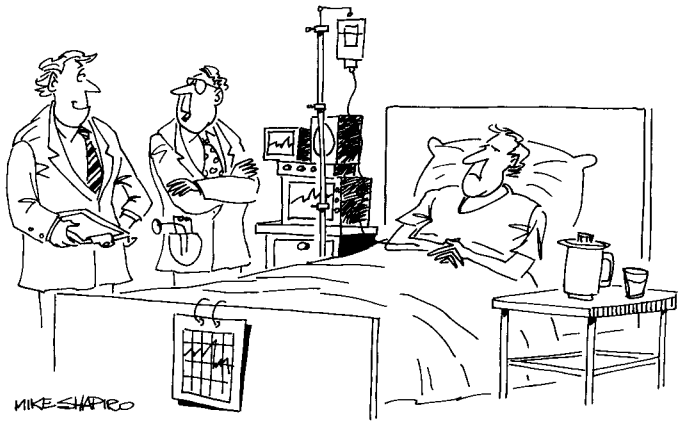
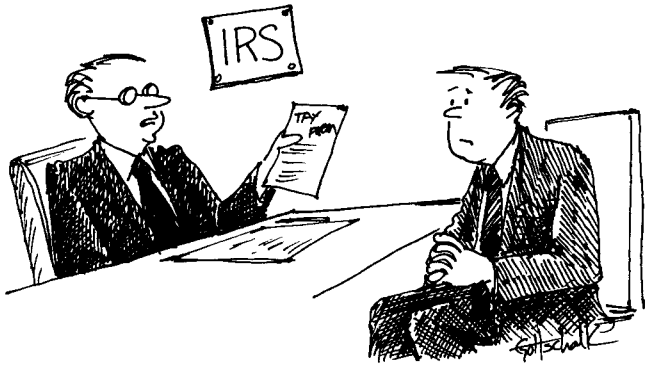


"He'll agree to the transplant as long as we guarantee the donor isn't a bleeding-heart liberal."

"That's our accounting department."

"On second thought, children, let's skip the board work."



"No deductions at all? What are you, some kind of a sissy?"

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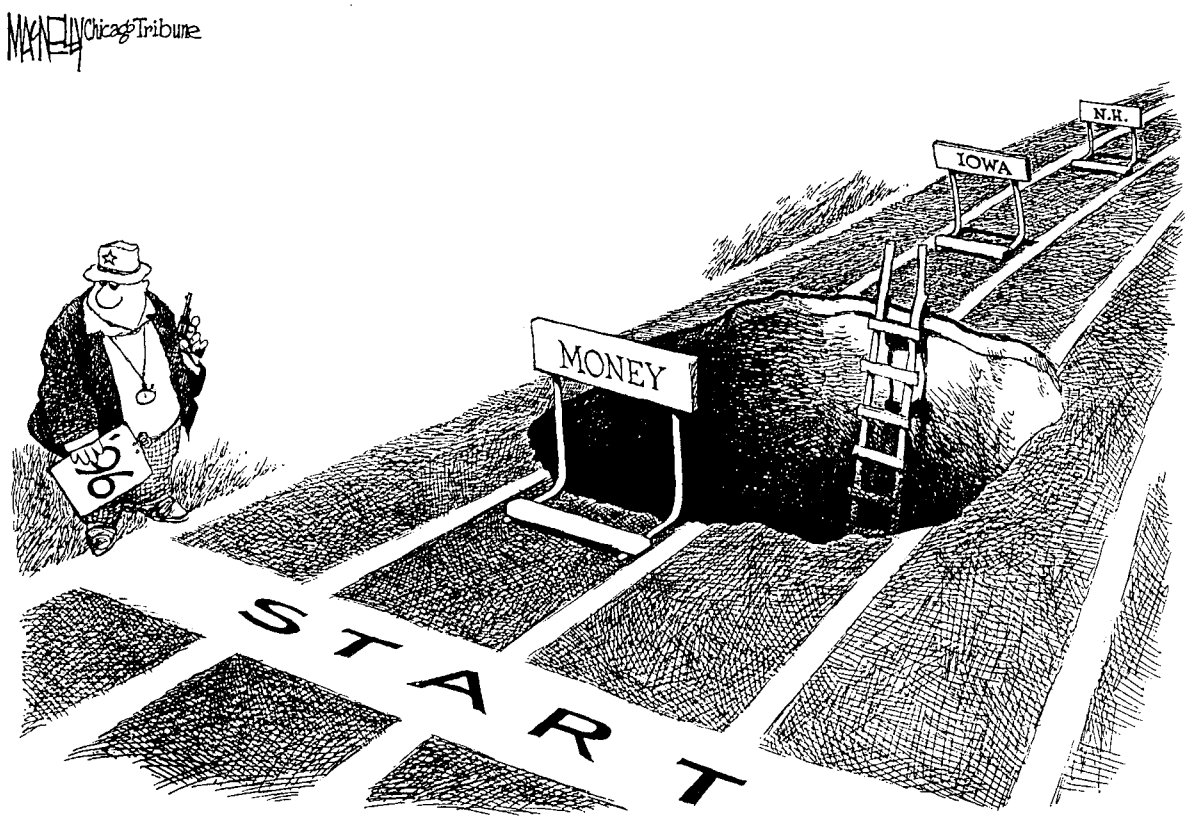

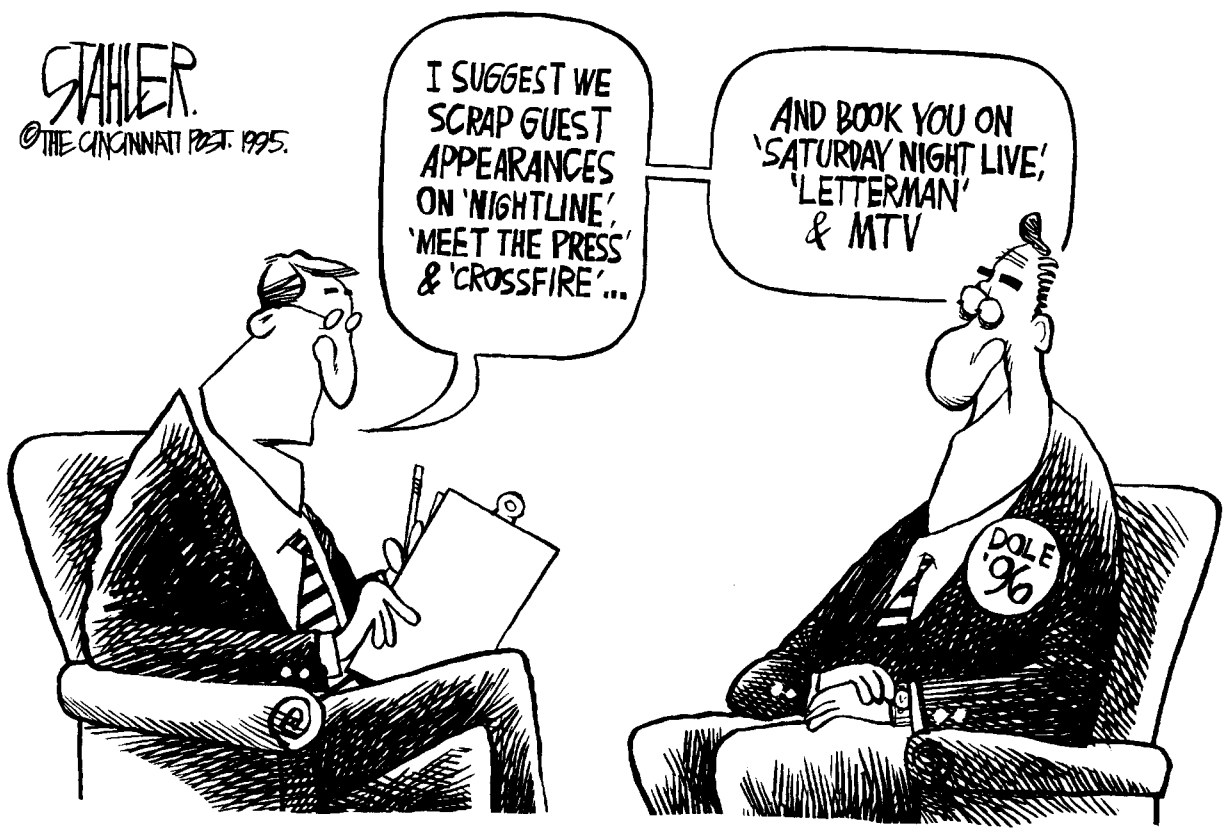
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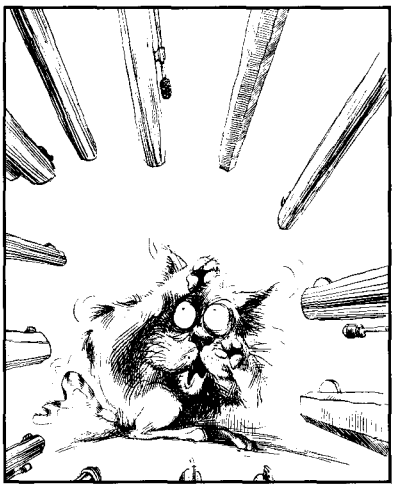

Lessons from Waco

KNOCK, KNOCK

Two years after the ill-fated raid on the Branch Davidians, federal law enforcement is still out of control. Reforms are necessary to prevent further disasters.

DAVID B. KOPEL

IF YOU can pass this simple test, you may be qualified to run a federal SWAT team.

1. You are assigned to serve search and arrest warrants on a man who lives in a building with 126 other people, including many women and children. Your job is to search the premises for illegal weapons. In the past, whenever government agents have asked to look around the premises, the man has always complied immediately. Once, the man was arrested, and he surrendered peacefully. The premises to be searched are on a ranch outside of town. The man you want to arrest regularly goes jogging along a lonely road; he also goes into town frequently. The best way to serve the search and arrest warrants is to

a) Nab the guy when he goes jogging or goes into town.

b) Knock on the front door and explain that you have warrants to search the premises. If you are denied admittance, force your way in.

c) Leave the warrants at the office. Shoot your way into the building.

2. As an agent for the Bureau of Alcohol, Tobacco, and Firearms, you are conducting an investigation of suspected illegal firearms modifications. You do not believe you have probable cause yet, so you send an undercover agent into the group home where firearms are allegedly being converted from semiautomatic to fully automatic. While in the group home, your undercover agent discovers no evidence of illegal conversions. But the agent is shown a videotape, *Breaking the Law in the Name of the Law*, which criticizes the BATF. The showing of the videotape

a) Is protected under the First Amendment.

b) Constitutes harassment of your undercover agent.

c) Creates probable cause, allowing an armed raid.

3. In the home you intend to search, you believe that some people have medium-powered rifles. The best way to protect the agents serving the search warrant would be to

a) Have them wear heavy ceramic body armor, which can stop a rifle bullet.

b) Attempt to serve the search warrant peacefully.

c) Have your agents wear light body armor, which can stop handgun bullets but not rifle bullets.

4. A federal statute requires that a person serving a search warrant announce his purpose and use force only if necessary. To comply with this statute, you should

a) Tell your superiors that you have better things to do than look for technical violations of federal gun regulations.

b) Announce that you are serving a search warrant. Identify which agency you are with. Use force only if your demand for a search is resisted.

c) Not bother to rehearse a peaceful approach. Strafe the building with machine-gun fire from National Guard helicopters. Engage in a "dynamic entry" designed to look good at your upcoming Senate appropriations hearings.

5. You have made a plan for a surprise attack to secure a building and conduct a search. You have no alternative plans in case anybody resists, or in case you lose the element of surprise. Shortly before your attack begins, your undercover agent comes out and tells you that everyone knows you are coming. The best tactical response at this point is to

a) Call off the attack and try again on a different day.

b) Knock on the door and, warrant in hand, ask for admittance to the house.

c) Proceed with your carefully scripted plan for a surprise attack, even though nobody will be surprised.

If you answered "c" to all of the above questions, you are qualified for a job with the Bureau of Alcohol, Tobacco, and Firearms. Indeed, given how few people choose "c," your responses suggest that you already *have* a job with the BATF.

Lingering Questions

THE questions, of course, are based on the BATF's disastrous raid on the Branch Davidian group home in Waco, Texas, two years ago, on February 28, 1993. The Treasury Department's fall 1993 investigation of the Waco raid acknowledged that the attempt to serve search and arrest warrants on David Koresh led to an incompetent armed assault. But the Federal Government has not answered the larger question of why the BATF and other federal agencies are in the business of launching attacks with machine guns, grenades, and helicopters to serve search warrants for violations of federal statutes, especially statutes involving victimless crimes.

As the new Congress gets down to the business of cutting back the bloated and oppressive Federal Government, few projects could be more worthwhile than a review of the culture of militaristic violence that permeates law-enforcement agencies such as the BATF. With federal agents now representing more than a tenth of all law-enforcement officers in the nation,

Mr. Kopel is research director at the Independence Institute.

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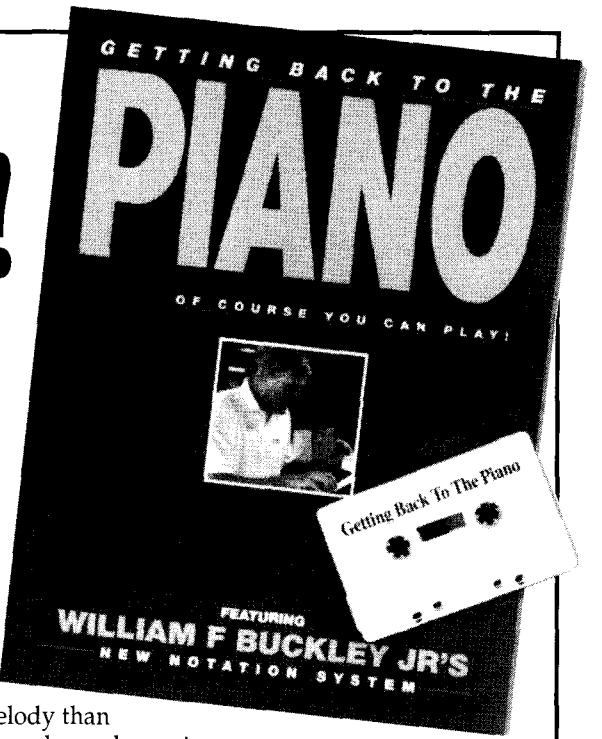

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reforms are necessary to prevent a repeat of Waco and to curtail the less publicized incidents in which, almost every day, American citizens are subjected to unjustifiable violence by the Federal Government. If the following reforms had been in place in 1993, the BATF would not have had carte blanche to obtain a search warrant for the Mount Carmel Center through fraud and deception, and to serve that warrant with an armed assault.

Forbid violent, masked, or no-knock service of search warrants, except when specifically authorized by a court. Until the early 1970s, police serving search warrants would routinely knock at a door and demand admittance. As a result of the war on drugs, no-knock raids have become more common, because drug suspects would flush incriminating evidence down the toilet while the police were knocking. There was a simple alternative solution to the potential destruction of evidence: the police and the utility department could have shut off water flow just before the search. In any case, no-knock raids are now common even in cases where there is no plausible risk of contraband going down the toilet. The Branch Davidians, for example, supposedly had Colt and Kalashnikov semiautomatic rifles that had been illegally converted into machine guns. Rifles won't fit down most toilets.

The violent service of search warrants on homes has become routine for much of federal law enforcement. Former BATF Director Stephen Higgins testified that the bureau's Special Response Team, which perpetrated the Waco attack, had had hundreds of similar "activations" in recent years.

Even searches that don't involve actual break-ins are often accompanied by excessive violence. Simple inspections of gun dealers' paperwork and seizures of allegedly mislabeled vitamins from health-food stores have been performed by people waving automatic weapons.

Last May, a BATF squad showed up at the home of gun-show promoters Harry and Theresa Lamplugh. When Mr. Lamplugh asked the BATF agents (most of whom did not wear identifying vests) if they had a search warrant, an agent stuck an MP-5 submachine gun in his face and told him, "Shut the f——up, motherf——r. Do you want more trouble than you already have?" During the six-hour search, BATF agents refused to allow the Lamplughs to get dressed. The search squad held a pizza party in the middle of the search, stomped a housecat to death, spilled Mr. Lamplugh's cancer medicine on the floor, and seized 61 guns, along with the Lamplughs' birth certificates, marriage certificate, medical records, business contact lists, and personal mail. To date, the Lamplughs have not been charged with any crime—or even told that they are suspected of any crime—but the Federal Government has refused to return their property.

There are cases where armed, desperate suspects may need to be subdued by surprise; in these instances, courts should grant special permission for a violent, no-knock raid. But forced entry and violence should be the exception, not the norm.

Similarly, except in special cases, federal police should not wear masks, as did many of the BATF and FBI agents at Waco. The Reconstruction-era Ku Klux Klan Act forbids wearing a mask for the purpose of terrorizing the public. There is no reason that public-sector terrorists should be exempt from the Act.

To help courts determine whether violent, masked, or no-knock searches are necessary, applications for such search warrants should have to contain all known evidence regarding the defendant's cooperation or lack of cooperation with government investigations in the past. David Koresh had previously allowed searches of his home by social workers. He had peacefully submitted to arrest and surrendered all his weapons when he was investigated for participation in a shoot-out with George Roden, his predecessor as leader of the Branch Davidians. During the summer of 1992, when BATF agents were talking to Koresh's gun dealer, Koresh invited them over to search his house. The BATF omitted all these facts from its warrant application.

Keep hearsay out of search-warrant applications. In a court, hearsay evidence (one person's claim about what another person said) is generally inadmissible, because it is not susceptible of cross-examination. The same consideration should forbid the use of hearsay in a search-warrant application. (Exceptions should match the hearsay exceptions in court.)

The application to search the Mount Carmel Center quoted a woman who said her brother claimed he saw a machine-gun conversion kit at a Branch Davidian home in Southern California. Rather than relying on hearsay, BATF should have interviewed the brother to determine what he actually saw. It is highly unlikely that what he saw was a kit to convert a semiautomatic weapon to fully automatic; such kits can be purchased only by a person who undergoes the same rigorous federal licensing process necessary to buy an actual machine gun.

Establish a thirty-day limit between the alleged commission of an illegal act and the date of the search-warrant application. Almost all the evidence in the BATF's application for a February 1993 search warrant in Waco was gathered in June or July of 1992. The investigation lay dormant until November 1992; it was revived after *60 Minutes* began work on an exposé of sexual harassment at the BATF, a few months before the bureau's appropriations hearings. Evidence more than half a year old should not be considered sufficient for a federal invasion of someone's home.

Require that search-warrant applications disclose possible exculpatory or contradictory evidence. There was virtually no evidence that the Branch

"It's the Governor—he wants to know if anybody here has a campaign contribution for him."

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Davidians had actually converted semiautomatic rifles into machine guns, a complex process that requires several hours of highly skilled gunsmithing. Perhaps the strongest "evidence" in the warrant application that conversions had occurred was a statement from a neighboring farmer that he had heard machine-gun fire coming from Mount Carmel. But the BATF never told the magistrate that the local sheriff had investigated the neighbor's machine-gun complaint and found it to be erroneous. The sheriff discovered that the machine-gun noise was caused by a legal trigger accessory called a "hellfire device," which makes a firearm sound but does not shoot. The BATF also forgot to tell the magistrate that the complaining farmer was involved in a property dispute with the Davidians.

Although the BATF has no legal authority over child-abuse cases, its search-warrant application dwelled on lurid allegations of abuse, based on an investigation by the state of Texas. The BATF failed to reveal that the investigation had been closed for lack of evidence on April 30, 1992, nearly ten months before the assault on the Mount Carmel Center.

Other irrelevant allegations were also presented in a one-sided manner. The claim by Marc Breault (who had left Mount Carmel in 1989) that Koresh had imprisoned a woman in June 1991 was included in the warrant application, but not the fact that the FBI had investigated the charge in April 1992 and closed the case in June 1992.

Require that search-warrant applications disclose evidence affecting the credibility of witnesses. The most important source of information in the Waco warrant application came from Marc Breault, who had been Koresh's right-hand man before angrily leaving the group. Breault had defected after Koresh—with an eye on Breault's new wife, Elizabeth—began claiming that all the Davidian women were meant to bear Koresh's children as Brides of the House of David. A self-described "cult-buster," Breault readily admitted he had a "vendetta" against Koresh, a fact that was not disclosed in the warrant application.

The fact that Breault is legally blind was never mentioned to the magistrate. To the contrary, the warrant application gave the impression that Breault had been one of Koresh's sol-

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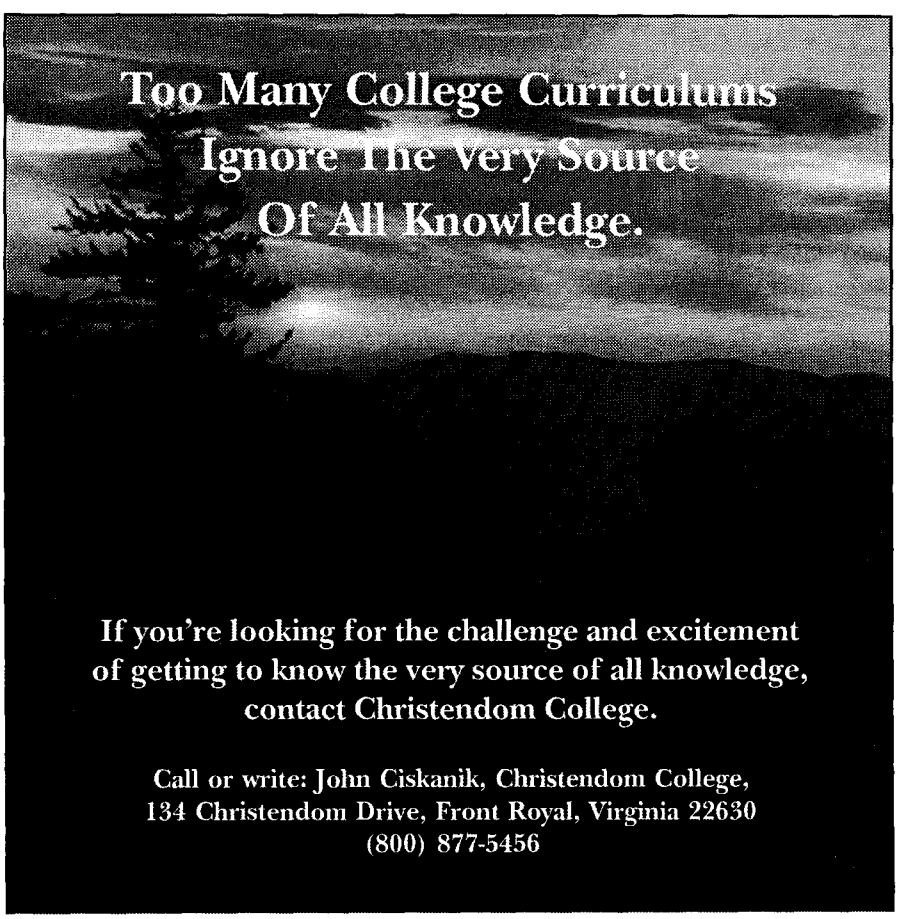
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diers. It said Breault "participated in physical training and firearm shooting exercises conducted by Howell. He stood guard armed with a loaded weapon." Able to see only three inches in front of his face with one eye, and not at all with the other, Breault would probably have been more of a threat to fellow Davidians than to intruders.

The subsequent Treasury Department study of the BATF's activities accidentally made it clear that the bureau suspected that some of its witnesses were unreliable, which would have undermined the validity of their evidence as a basis for a search or arrest warrant. Two of the six key witnesses who had at some point lived in the compound mentioned 24-hour armed guards. Yet the BATF raid planners "concluded that neither armed guards nor sentries were posted at the Compound at any time." The planners' conclusion means the BATF doubted the reliability of the witnesses and the ongoing validity of their evidence—but never shared those doubts with the magistrate.

Limit the time for which warrants, affidavits, and related items can be sealed after service. Immediately after procuring the search warrant, the BATF obtained a court order to have the warrant sealed from public scrutiny. During the siege, FBI negotiators sent Koresh a copy of the search warrant and related documents. At this point, there was no law-enforcement need to keep warrant documents hidden from the public. Yet they remained sealed until after Mount Carmel was burned to the ground on April 19. If the warrant documents had become public in March, after having been shown to Koresh, it would have been quickly discovered that there was no probable cause for the search and no justification for serving the warrant violently without attempting a peaceful entry. Exposure of the warrant's deficiencies in March, while the siege was in progress, might have eroded public support for the operation sufficiently to keep the government from mounting the final tank and chemical-weapon attack on April 19.

Require federal law-enforcement agents to undergo constitutional sensitivity training. Law-enforcement officers, especially members of elite units like the misnamed FBI Hostage Rescue Team, should be reminded that loyalty to the unit must be subordinate to respect for the law and for constitutional rights. Officers should be aware that American law justifies the use of force for self-defense by civilians, and that such force may lawfully be used against law-enforcement officers when they attack a person without appropriately identifying themselves or use excessive force. Training should also explain that exercise of First Amendment rights, such as owning a Gun Owners of America videotape critical of the BATF, does not constitute probable cause for a search.

Make federal law enforcement accountable. In January 1993, ten civil-liberties groups, including the American Civil Liberties Union, the National Rifle Association, and the Independence Institute, wrote to President Clinton asking for a temporary commission to study the growing militarization and violence of federal law enforcement. Besides creating a special commission, Congress should hold its own hearings on the subject of law-enforcement violence, a problem that has raised concern among legislators as diverse as Senator Orrin Hatch (R., Utah) and Representative Patricia Schroeder (D., Colo.).

An independent civilian oversight commission should be established to investigate allegations of federal law-enforcement abuse. The panel would be similar to the police review commissions that exist in 60 per cent of major American cities. Finally, a permanent special prosecutor should be created to investigate and prosecute the violent crimes perpetrated by federal law-enforcement agents. Since President Clinton has refused to take any steps to make federal law enforcement accountable, Congress should do the job on its own. □

Will Judges Balance the Budget?

SILENCE THE COURT

If a Balanced Budget Amendment would empower the judiciary to tax and spend, we'd be better off without one.

HADLEY ARKES

WITH the Balanced Budget Amendment still in limbo as *NR* went to press, one disaster had at least been narrowly averted in the Senate—though it remained a possibility in the House. It had taken Senator Sam Nunn to lead the Republicans away from a constitutional precipice over which they seemed determined to fall. For if disputes about the budget would raise constitutional questions under the BBA, then those decisions could now end up in the courts. Senator Joseph Biden had drawn precisely this inference during the hearings in the Judiciary Committee, but there was nothing here to disturb his serenity, since he has borne no objections over the years to enlarging the power of judges. The question is why Biden's comment, innocently blurted out, did not set off alarms and buzzers among the Republicans. Not until the 11th hour did Sam Nunn pick up on Biden's idle remark and speak the simple, chilling words: the power over taxing and spending could be shifted into the hands of judges, who bear no responsibility to the electorate, who will have to pay the taxes. And if that had been the result of this amendment—if the final BBA had contained no provision to limit the involvement of the courts—then nothing would be more at odds with the purposes of the amendment, or the deeper principles of the Constitution.

During the Senate hearings on the amendment, Biden noted that spending bills often include provisions to assure that the money is not all spent in the most populous states. Through art-

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ful formulas, some of it is allocated to less populous states like his (Delaware) or that of his Republican colleague, Orrin Hatch (Utah). If a Balanced Budget Amendment were adopted, Biden asked, could a President invoke the authority of the Constitution to override the provisions of the law and delete the funds for the small states? The answer was that he very likely could: the commands of the Constitution would take precedence over the provisions of an ordinary statute. But as in so many of these questions, the answer may not be crystal clear, and Biden assumed that such issues would wind up in the courts. And these days, any group adversely affected by budget cuts might very well have standing to sue.

The warning was posted several years ago when a federal judge ordered a stay of the Hyde Amendment, which barred the expenditure of public funds for abortion. Under the Constitution, taxes are to be levied only through an appropriation by law, in a bill voted by the elected representatives of the people. But in this case, the judge's order compelled the government to pay for abortions until the matter could be appealed to the Supreme Court. The Court eventually quashed the order, but until it did, we were faced with the prospect that judges could order money to be expended from the Treasury. Professor Basil Uddo of the Loyola University School of Law noted at the time that interest groups all over the country could easily find at least one sympathetic federal judge, someone willing to protect them from cuts in the budget. And after all, it takes only *one* federal judge to issue a stay that can bind the entire Federal Government. If judges had the authority to block the refusal to spend, to order the Executive to spend beyond its budget, then we truly would have produced a radical change in the republican form of government.

Despite the outcome of the litigation over the Hyde Amendment, judges are still willing to get involved in decisions on taxing and spending. In 1990, the Supreme Court sustained the order of a lower federal court that local taxes be increased to pay for a plan of desegregation in the schools. That decision, *Missouri* v. *Jenkins*, offers a chilling analogy: it permitted the court to remove barriers in the state constitution that prevented Kansas City from raising its property taxes. If the federal courts were armed with a new constitutional amendment, would they have the authority to end deductions or dissolve restrictions on tax rates in order to bring in more revenue?

The Obvious Solution

I HAVE never been an enthusiast for the Balanced Budget Amendment, especially if it did not have a provision that made it harder to raise taxes. But I could see its political utility. Yet I thought it was widely understood, among the elected members of the government, that this kind of amendment would be addressed exclusively to them. It would function as a guideline and restraint on the people who alone bore the constitutional authority to make decisions on taxes and spending. And so I assumed that any constitutional amendment would avoid judicial interference by drawing on the power of Congress already contained in Article III, Section 2, of the Constitution, the power to establish or limit the appellate jurisdiction of the federal courts. Congress has made ample use of that power on other occasions: most notably, it removed from federal courts the power to issue injunctions in labor disputes and the authority to review the regime of controls on wages and prices that was installed during World War II. So it seemed the obvious solution was to add a sentence to the Balanced Budget Amendment stipulating that decisions on the budget will be reserved to the President and Congress, that they will not come under the jurisdiction of the federal courts.

But the amendment passed by the House contained no provision on the jurisdiction of the courts, and no such provision was originally in the Senate version. The Republican majority there had not only failed to stake out that political ground; it was helping engineer an arrangement for transferring these decisions to judges. At the same time, there is no reason to think that this corps of judges has a strong inclination to cut taxes and spending. The federal judges, as a group, have shown no particular aversion to expanding the powers and expenditures of the government. Over the last several years, the Supreme Court has broad-

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ened the protections for property owners against the schemes of local governments to "take," in effect, their property for public use without compensation. Yet these Supreme Court decisions have been widely ignored by judges in the lower courts, who don't find them congenial. Professor Richard Epstein of the University of Chicago Law School has remarked that this obstruction by the lower courts may amount to a policy of civil disobedience carried out by judges. And these are the men and women who would suddenly be given the authority to override the elected branches on taxing and spending.

After You, Your Honor

THAT ALL this should be done with the connivance of elected officials in Congress should come as no surprise. As Justice Felix Frankfurter warned, let judges become politically active, and politicians will find an incentive to step aside in their favor: if the most controversial matters of public policy, from abortion to the raising of taxes, can be shifted to the judges, the politicians can be spared the political heat. The tough decisions can then be made by officials who are insulated from the wrath of the public because they never need to stand for re-election.

The imminent danger of corruption in a democracy has ever been the temptation to buy blocs of voters with other people's money. Against that ancient tendency, there has been this one anchoring point of sobriety: that the bills have to be paid, and the people who pay them still have the vote. Were it not for that one salutary feature, the government would have been locked up years ago by the same crowd that has made affirmative action and busing so difficult to dislodge. To bring the courts into decisions on taxing and spending is to remove the one feature of democracy that will always work for a conservative politics.

When Senator Nunn first proposed an amendment to avert that danger, Senate Republicans voted it down. It was only when Nunn's support became pivotal that he was able to extort the GOP support that should have been enthusiastic. In the event, Nunn's improvement passed 92 to 8.

At the time of writing, the Balanced Budget Amendment, itself sensibly amended, is just one vote short of passage. Should it fail, the issue returns to electoral politics—but next time let Republicans *begin* with an amendment that keeps judges out of budgets. Should the amendment pass, however, it goes to a conference of both Houses where some House Republicans would apparently like to see Nunn's improvement removed, reasoning with full literalness that decisions on taxing and spending should be removed from the hands of politicians. They have it half right. The decisions will still be in the hands of politicians—but politicians who need not run for re-election.

This cannot be the revolution Newt Gingrich had in mind. If we cannot have a balanced budget without shifting power to the courts, it's better to continue the government as it was under Washington, Lincoln, and Eisenhower, without a Balanced Budget Amendment. As G. K. Chesterton said, governing is rather like writing a love letter or blowing one's nose: it is something a man ought to do for himself, even if he does it badly. □

The Politics of Environmental Reform

CONTRACT HITS

The best hope for environmentalists who oppose regulatory reform is pre-emptive compromise by the Republicans.

JONATHAN H. ADLER

EVEN before the opening of the 104th Congress, Washington's pro-regulatory interest groups had begun their assault on the new Republican agenda. "Buried within the 'Contract with America' . . . is a secret war on the environment," screamed a Sierra Club release. Ralph Nader told the *Washington Post*: "They're taking the cop off the federal health and safety beat." Gary Bass, director of OMB Watch, added that the Contract represents a "scorched-earth policy" that liberal interest groups will mobilize to defeat.

The subject of this ire is the eighth plank of the Contract, the "Job Creation and Wage Enhancement Act." Drafted by House Majority Leader Dick Armey (Tex.) and Majority Whip Tom DeLay (Tex.), the bill is designed to restore sanity to the regulatory process by, among other things, forcing regulatory agencies to consider the costs of their actions and limiting the ability of federal bureaucrats to manipulate private-sector decisions.

Particularly upsetting to environmentalists is the inclusion of the "unholy trinity": risk-assessment requirements, limitations on unfunded mandates, and increased protection for property rights—"three radical proposals which, together, amount to a Polluter's Bill of Rights" according to the Sierra Club. Last year, environmentalists scuttled the effort to reauthorize several major environmental statutes lest it open the way to such reforms. In the new political climate, they recognize that it will take far more effort to protect their regulatory programs, given rising public support for reform. Thus, they have launched an all-out media and direct-mail blitz to stop Republican regulatory reform plans.

Opponents of reform took advantage of vague language in discussion drafts of the Job Creation Act circulated last December in order to caricature Republican plans as likely to harm public health and safety. A common charge against the legislation's "takings" provision is that it would force the government to "pay polluters not to pollute." Such a charge could be made against the original language, which called for compensation of property owners whenever the economic value of their

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land was reduced by government action. But the bill was rewritten specifically to exclude federal regulations that prevent harm to individuals and their properties. The bill was tightened in other respects as well between the election and the introduction of the Contract proposals on the first day of the 104th Congress.

The more responsible critics have taken note of the revisions. Testifying before the House Science Committee on February 3, Paul Portney, vice president of Resources for the Future, went out of his way to compliment House Republicans for the modifications, even though he was testifying against the bill at the invitation of committee Democrats. But others have only stepped up the attacks. Writing in the January 14 *New York Times*, Al Meyerhoff of the Natural Resources Defense Council charged that the "takings" provision "could bring to a standstill" government efforts to ensure clean air and water.

Environmentalists feel they are already too late to stop a bill limiting future unfunded mandates on state and local governments, and President Clinton seems reluctant to veto bills requiring risk assessment and cost–benefit analysis. Representative DeLay, Representative David McIntosh (R., Ind.), and Senator Don Nickles (R., Okla.) are also pushing a measure to impose a six-month freeze on new regulations, retroactive to the election, in order to prevent bureaucrats from rushing out new regulations to circumvent the Contract.

Since environmentalists have already lost strategic ground in the fight against two-thirds of the "unholy trinity"—unfunded mandates and risk assessment—their sights are trained on the third: property rights. The Clinton Administration has called the property-rights proposals indefensible, and in a recent speech Vice President Al Gore echoed the complaints of the Contract's most vociferous critics.

The fight over property rights will give an early indication of how much, really, Congress has changed. Senate staffers are more concerned than their House counterparts about the political viability of regulatory reforms and are likely to take a "more timid" approach to issues like property rights, one congressional aide says. Nonetheless, the property-rights issue has caught the interest of Senate Majority Leader Robert Dole (Kan.), Senator Phil Gramm (Tex.), and Senate Judiciary Committee Chairman Orrin Hatch (Utah), each of whom is sponsoring a bill. Gramm's is the closest to the one in the Contract, while Dole has opted for a more modest approach that would merely require federal agencies to consider the impact of regulations on landowners before enacting them. Environmentalists bitterly opposed such a requirement in the last Congress but are now warming to the Dole approach as the least of several evils.

Dole, Gramm, and Hatch have been working together to craft a bill incorporating provisions from each of their proposals. The goal is to write a bill that can overcome a filibuster and reach the President's desk. This is a real concern, since moderate Republican senators like John Chafee (R.I.) and James Jeffords (Vt.) are unlikely to support a substantive property-rights bill.

The Threat of Compromise

THERE is trouble in the House as well. Some Republicans on the House Judiciary Committee have sought to water down property-rights protections so as to deflect environmentalist criticism and keep GOP moderates such as John Edward Porter (Ill.) and Sherwood Boehlert (N.Y.) on board. One proposal would limit the scope of property-rights protections to regulations issued under a handful of environmental laws.

Another concern is the impact of compensation requirements on federal spending; a bill that would result in massive new budgetary outlays to pay for federal regulations would be unacceptable to deficit hawks. Some propose giving agencies the choice of deciding not to impose a regulation —which would make compensation unnecessary—or finding the money within their budgets. When agencies run out of money, they could no longer regulate. House aides say the Congressional Budget Office accepts this approach as deficit neutral.

Oddly enough, among those encouraging Republicans to back away from strong property-rights protections are some business groups—because they believe the fight is unwinnable. "We've got to bend over backwards" and make compromises to get a bill through before the political winds shift, says Stuart Hardy, an environment and resource specialist at the U.S. Chamber of Commerce. Although the Chamber officially supports the property-rights language in the Contract, Hardy and others recommend watering down property-rights protections to ensure passage. In particular, they would raise the threshold below which the economic impact of government land-use regulation is considered negligible from 10 per cent to 50 per cent of land value. This would mean that a property owner who saw the value of his land cut nearly in half when the parcel was declared a wetland would not be entitled to compensation.

Under such a standard, agencies would have a great deal of leeway to regulate landowners without paying compensation. Regulators could demand that property owners forfeit just under 50 per cent of their land as "mitigation" in return for a permit approval. Such scenarios don't seem to

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bother the Chamber of Commerce. "It might not be bad public policy to have a situation where agencies and landowners can sit down and negotiate a mitigation arrangement," Hardy says. Some property-rights proponents who have had experience with such mitigation arrangements would disagree; they call them "negotiated extortion."

Hardy acknowledges that property-rights groups might be "really upset" by the 50 per cent proposal, but these people "believe the 'War on the West' is a reality and not just a campaign issue." Other Chamber officials have characterized the sort of landowners who would object to a 50 per cent threshold as "greedy" and sternly counseled business lobbyists against "regulatory rollback" efforts.

If this is the stance of the nation's most prominent business lobby, property protections and other regulatory controls may be in jeopardy. As in the fight for a tax-limitation provision in the Balanced Budget Amendment, preemptive compromise is a sure way not to get what you really want. Furthermore, failure to enact strong property-rights provisions might alienate a grass-roots constituency that was instrumental in many House races, particularly in the West, and soften the distinctions between the parties.

David Howard, vice president of the Alliance for America, is angry at those who are backing away from a strong property-rights position. "If the government takes something for the 'public good,' it should pay for it," he says. "This is not a negotiable point. What we want is the government to stay out of our back yards, period." If the Chamber has its way, all Howard can be assured of is that the government will stay out of half of his yard. □

Making Abortion Rare

FETAL POSITION

The pro-life majority in Congress has a unique opportunity to enact sensible limits on elective abortion.

STEPHEN C. MEYER & DAVID K. DeWOLF

SINCE their dramatic election victory last November, Republicans have been urged to avoid getting "bogged down in divisive social issues." Yet as the controversy over President Clinton's nomination of Henry Foster for surgeon general has shown, Americans are more concerned about so-called social issues than media coverage and elite opinion would indicate. This is particularly true of abortion, ostensibly the most divisive of all social issues.

Candidates committed to a pro-life agenda actually did disproportionately well in 1994. Not a single pro-life incumbent of either party lost to a pro-choice challenger in a gubernatorial, House, or Senate race. Pro-life challengers also did well: 64 of the 72 GOP House freshmen are clearly pro-life, as are 2 of the 14 new Democrats. Most of the 11 incoming GOP senators are also pro-life. Exit-polling data confirm that the abortion issue helped nearly all Republicans with a pro-life position.

In the House a clear majority—224 members—have pro-life voting records or views, while only 160 members define themselves as pro-choice. The remainder have mixed records. In the Senate, the pro-life side holds a narrower edge, with 47 senators strongly pro-life, 44 pro-choice, and 9 with mixed records.

These numbers represent more than just an accidental consequence of the electorate's move to the right in the mid-term elections. They reflect a growing moral consensus about the practice of abortion on demand. While a minority of Americans favor a complete prohibition of abortion, an overwhelming majority favors significant legal limits on the right to terminate pregnancy. Americans believe that abortion should be, to use President Clinton's word, "rare."

Given this consensus, the pro-life majority in Congress has a unique opportunity to place sensible restrictions on elective abortion. A compelling moral, legal, and political case can be made for Republican-led initiatives to limit late-term, mid-term, and sex-selection abortions.

The Moral Argument

THE moral case for limiting late-term abortions depends not solely on religious authority but also on widely shared moral intuitions and recent developments in medical science. With the advance of medical technology during the last two decades, the age at which a human fetus can survive outside its mother's womb—the so-called age of viability—has steadily declined. While obstetricians disagree about the minimum age of viability, all agree that some premature infants of 20 weeks, and most of 24 weeks, can survive *ex utero*. Yet under *Roe* v. *Wade*, clinical abortion is allowed through the full nine months of pregnancy. Last year, more than 50,000 abortions were performed in the United States after 17 weeks' gestation, including at least 17,000 after the point of viability.

While such abortions constitute a small minority of the 1.6 million performed annually, they represent little more than legalized infanticide. As many as 1.5 million American families are waiting to adopt children. Women wanting to rid themselves of viable infants can generally do so as easily by delivering them and then turning them over to adoptive parents as by aborting them. Given the health risks to women from the abortion procedure itself, it is hard to provide a compelling reason (apart from complications that threaten the mother's life) to allow abortion late in pregnancy.

In any case, the present situation creates absurd moral dilemmas for those defending the status quo. What

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possible justification can exist for the termination of an unwanted fetus of, say seven months, when heroic medical measures are being taken, possibly in the next ward, to save even younger children at their parents' behest? Why should the biological mother's attitude determine an infant's moral status? Those who deny the Biblical claim that God "forms the spirit of man within him" may still dispute the sanctity of life or whether life begins at conception. But no one can credibly claim that life begins only after a full nine months of gestation.

Advances in medical science and technology have important moral implications for mid-term abortions as well. So disturbing has been the experience of observing abortion on ultrasound monitors that many abortion doctors who have seen the procedure have refused to participate in abortions again. Bernard Nathanson, a former director of the National Abortion Rights Action League (NARAL), who performed thousands of abortions, repudiated the practice in the early 1980s after observing the apparent agony of a fetus subjected to a suction-tip abortion.

Modern neurology supports Nathanson's impression that the fetus experiences pain, not just reflex. Reflexive reactions, such as the involuntary and painless knee kick elicited by the tap of a physician's mallet, electrically stimulate only the spinal column. By contrast, the more complex "aversive" reactions that indicate pain stimulate a tiny brain sensor called the thalamus. Neurologists can detect thalamus and central-nervous-system function in the human fetus as early as the 8th, and certainly by the 13th, week of gestation. The coordinated motor responses observable in a fetus undergoing abortion—its desperate rearing and "silent screams"—give every indication that the second-trimester fetus is a sentient creature capable of experiencing pain.

By what moral calculus, religious or secular, can such a procedure be justified? Humanitarian common sense dictates that we not subject sentient human fetuses to painful procedures that we would protest if they were done to the higher animals. We would not heedlessly dismember dogs or cats or crush their skulls with forceps. Why shouldn't a sentient and, by all accounts, at least a potential human being be afforded the same considerations and legal protection as animals receive in many states?

In view of these considerations, a future Congress could certainly justify legislation prohibiting abortions after the beginning of the second trimester (13 weeks). For the present, however, pro-life legislators should focus on prohibiting post-viability abortions and educating the public about the physiological development of the pre-viability fetus and its affective response to the abortion procedure. Congress could, for example, fund programs designed to inform prospective parents about fetal pain and post-abortion health risks to the mother. Those worried that such a move would create a political opportunity for pro-choice Democrats should note that more than 80 per cent of the public, including a significant percentage of the population usually classified in polls as "pro-choice," already opposes abortions after the beginning of the second trimester.

The Significance of Casey

ON THE legal front, there are reasons for cautious optimism about national legislative efforts that occupy the moral and political center of the abortion controversy. The "center" or "plurality" of the Supreme Court (David Souter, Anthony Kennedy, and Sandra Day O'Connor), which has to approve the constitutionality of any legislative restrictions on abortion, upheld some limits in *Planned Parenthood* v. *Casey*. Although they claimed to reaffirm the central holding of *Roe*, they effectively redefined its meaning and undermined its logical and moral foundation.

In *Roe*, the Court said the mother's rights are strongest in the first trimester, but it did not accept that the rights of the fetus ever eclipsed those of the mother. In *Casey*, the Court explicitly rejected this reasoning, with seven of the nine Justices allowing some limitations on abortion rights. As the plurality put it, "States are free to enact laws that provide a reasonable framework for women to make a decision that has such a profound and lasting meaning," provided they do not place an "undue burden" on the woman. More importantly, the plurality also acknowledged that, while "the woman has some freedom to terminate her pregnancy," that freedom gives way at some point to the rights of the fetus. In particular, they said "the line should be drawn at viability."

It remains true, of course, that the center, and thus the Court, refused to overturn *Roe*. Yet the center's reasons for refusing to do so suggest a greater openness to shifting policy responsibility from the Court back to legislatures. The Court seemed reluctant to overturn *Roe* because it worried about the absence of ballast in the political center. The plurality called for "the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution."

Pro-life legislators can take the plurality's concern about moderation into account and formulate their legislative agenda accordingly. They certainly should feel no compunction about occupying the territory that has already been ceded by the Court. Abortions after 20 weeks (the point of earliest viability) remain legal in all fifty states, even though a majority (at least six) of the Court's current members have indicated a willingness to consider legislation protecting viable life.

Yet constitutional opportunities may exist for legislation that presses the issue further. The Court's abandonment of the original justification for *Roe* may allow the emergence of a new legal context for the discussion of abortion—one that could allow restrictions on sex selection and the abortion of sentient second-trimester infants.

In *Roe*, the Supreme Court acknowledged that, if the fetus was indeed a person, it would be protected by the Fourteenth Amendment. Abortion has been permitted only because of doubts about the personhood of the fetus. Yet with the advance of medical technology and the science of fetology, arguments

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denying the personhood of the 20-week, and indeed the 13-week, fetus seem increasingly implausible. Hence, the Fourteenth Amendment—which authorizes Congress to intervene on behalf of "persons" in danger of being deprived of life, liberty, or equal protection—emerges as a legitimate vehicle for protecting the unborn.

In previous civil-rights legislation Congress has outlawed race and sex discrimination. What greater form of sex discrimination could exist than selective killing on the basis of sex?

Tackling the sex-selection and fetal-pain issues will push the envelope of opportunity detectable in *Casey*. While there is a danger of overreaching, there is also a danger of timidity. If Congress cannot persuade the Supreme Court to retreat gracefully from its attempts to micromanage the abortion controversy, what are the chances that the Court will do so as a result of piecemeal state legislation? In fact, Congress has the opportunity to shoulder more responsibility for abortion policy and to wean the Court from a task for which it increasingly displays only a sense of weary obligation. Congress can offer itself as a lightning rod for the political repercussions that centrists on the Court fear.

The Political Advantages

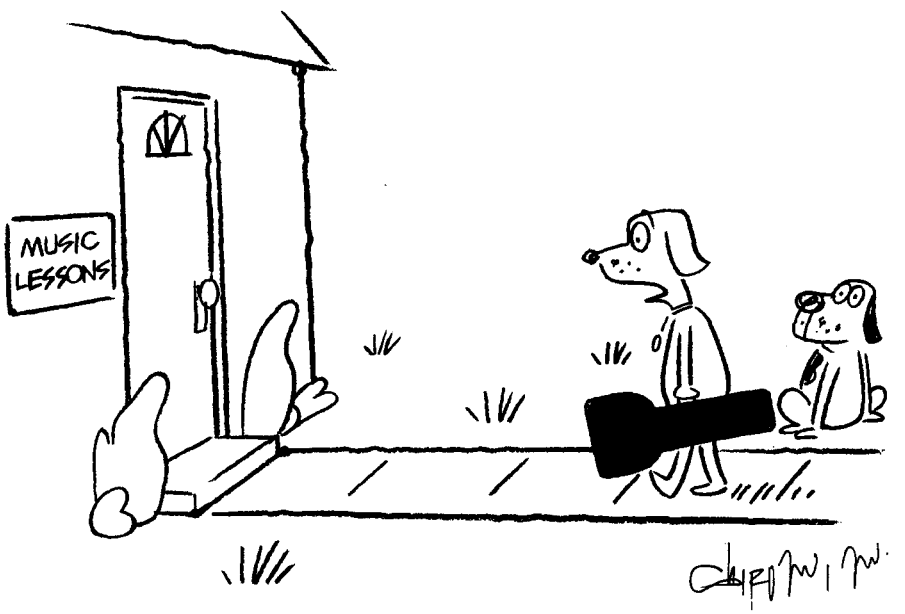
REPUBLICAN legislation outlawing the most unjustifiable abortions will benefit the Republican Party politically precisely because such legislation would accurately express the current moral consensus. Polling data show that less than 10 per cent of Americans agree that abortion should remain legal in all circumstances through nine months of pregnancy. Yet both the Democratic platform and the pro-choice arguments of many Democratic politicians, including the President and the First Lady, implicitly sanction such license. Moreover, a large segment of the electorate does not realize that the Democratic platform endorses the right to choose late-term abortions, and many voters do not even realize that such abortions are legal. A GOP-led measure to outlaw such abortions would publicize the Democratic Party's radical and unpopular commitment to abortion on demand.

Republicans should not pass up the opportunity to place pro-choice Democratic politicians on the horns of a dilemma. Republican legislation will force Mr. Clinton either to capitulate to reason by supporting the protection of sentient and viable infants or to defend an indefensible position, thus moving the moderate pro-life vote ever more firmly into the Republican camp. As Family Research Council President Gary Bauer recently pointed out, 27 per cent of voters in the last election said the abortion issue influenced their vote, and two-thirds of this group identified themselves as pro-life. Both these percentages are likely to rise if Republicans in Congress seize the initiative and define the abortion issue on favorable political, legal, and moral terms.

Many pro-life activists may feel uneasy about appearing to compromise on the sanctity of life at any point after conception. In this connection, an historical parallel may prove instructive. While debating Stephen Douglas, and later while campaigning for the Presidency, Abraham Lincoln acknowledged that the Federal Government did not have the power to end slavery by fiat. Yet by warning that "a house divided against itself cannot stand," he refused to admit the legitimacy of slavery. He continued to argue, on Biblical and moral grounds, for ultimate abolition. At the same time, in the legal and political domain he accepted compromises designed to achieve limited goals and to build moral consensus.

By refusing to press for immediate and outright abolition in the South, Lincoln angered many abolitionists; by supporting limits on the territorial expansion of slavery, he angered slave owners, who understood that such measures denied the moral legitimacy of slavery. Ever principled *and* pragmatic, Lincoln forced the issue where the arguments for slavery were weakest and avoided engagement (until he could win) where justifications for slavery appeared most strong.

Pro-life legislators in 1995 have an opportunity to employ this venerable Republican strategy to redefine the terms of the most compelling moral issue of our time. By passing intentionally modest and incremental legislation designed to expose the moral contradictions, the legal ambiguities, and the political vulnerabilities inherent in the pro-choice position, Republicans can begin to forge a national consensus against the unnecessary killing of the unborn. Not only would legislation of this sort expose the anachronistic legal and scientific reasoning that remains the sole foundation for *Roe*, it could also force both political parties to acknowledge the moral consensus that *Roe* has forcibly suppressed. Americans believe that abortion ought to be made more rare. Republicans who heard and understood this message from the election of 1994 will survive to run again and again—as will American children yet unborn. □



"Was I ever wrong! I thought once I learned to 'speak' that would be the end of it."

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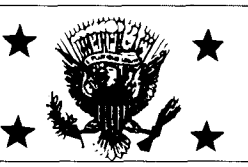
INTERNET RELAY CHAT
**now joining channel "political.talk" **in channel:
<al> (algore@vice_president.whitehouse.gov),
<rusty>(Dr.Rust@rainforest_test_site.brazil.edu)
<al> so, anyway, Rusty, it's nice to finally have a virtual conversation with you. **no response
<al> Rusty? Are you there? **<rusty>Dr.Rust@rain forest_test_site.brazil.edu logged off 23:19 GMT
<al> Anyone else out there on the Internet?
**<newt>Newt.grich@speakers.house.gov now joining channel
<newt> What are you doing, hanging out on Internet Relay Chat lines all night, all by yourself? Can I be totally honest with you, Mr. Vice President? That's bizarre and pathetic behavior.
<al> Oh yeah? As a matter of fact, I was chatting online with an old friend who's doing important research down in the Brazilian Rainforest.
<newt> Right, right.
<al> Anyway, what brings *you* here? Did you get sidetracked on your way to alt.erotica.kinky?
<newt> I was posting an update on the Republican web site http://hundred.days/~gopac.money, and I had some time before going on America Online and I thought I'd stop by the old IRC site to find out what's on the minds of people who have taken the bull by the horns and bought a laptop with modem software without waiting for the tax credit.
<al> If you don't mind my saying, Mr. Speaker, aren't you a bit of an "Internaut Come-lately"?
<newt> Meaning?
<al> Where were you when I invented the phrase "Information Superhighway"? And when I talked about the World Wide Web as the greatest aid to democracy since Voice of America? Where were you?
<newt> Hey, I'm the one that wants to give everyone free laptops. And don't forget the Congressional Reform Act of 1995, which requires Congress to file all pending legislation on the Internet.
<al> Big deal. We were giving virtual tours of the White House before you had even upgraded to a 486.
<newt> This from a guy in an administration that still takes *bus* tours!
<al> Unfair flame! Unfair flame! You know darn well that I argued and argued for a virtual bus tour.
<newt> That bus didn't look virtual to me. It was white and shiny and totally three-dimensional.
<al> Yeah, well, just wait 'til '96. I'm actively lobbying for a one-hundred percent virtual campaign: no plane, no stump speeches, no convention—just a web host site and a bunch of headsets.
<newt> Really?
<al> Really. That's off the record, by the way.
<newt> Understood.
<al> I'd like to see Bob Dole surf the 'Net.
<newt> Dole *is* out of date. But then again, it's not his fault he has trouble with a mouse.
<al> Different generation, I guess.
<newt> Yeah. You can say that again.
<al> My dad's the same way. A couple of months ago I said, "Dad, how would you like a really fast laptop for your birthday?" And he kind of looked at me and said, "Son, I haven't had one of those since I went to Bangkok in the 'sixties and your mother stayed home. And as I recall, the point wasn't to get a really fast one." You know how parents are.
<newt> Do I ever. Last night I got a frantic phone call from my mother. "Don't make them take 'Dr. Who' off the air, Newtie," she yelled into the phone. And I'm saying, "Ma! PBS can fund itself. The government can't be subsidizing everyone's entertainment!" And I hope you agree with me, Mr. Vice President. There's lots we need to cut.
<al> Oh, I agree. Except the 'Net, of course.
<newt> Of course. But that's more education and research. It serves an important scholarly service.
<al> I agree completely.
<newt> So how do you like the new "Star Trek"?
<al> I like the new female captain.
<newt> You do?
<al> Absolutely. It's about time a woman served in a combat capacity aboard a starship.
<newt> Maybe. I just keep worrying about infections.
<al> It's getting late.
<newt> You're right. But you know, I have a few minutes before I'm due on America Online.
<al> Yeah?
<newt> So were you kidding about alt.erotica.kinky?
<al> Well, I don't know firsthand. But I've heard stuff.
<newt> You wanna go?
<al> But what if we get caught?
<newt> We'll tell 'em we got lost on the way to http://new.technologies.forum/~tech.html.
<al> Okay. But you first.
<newt> Here goes.
**<newt>Newt.grich@speakers.house.gov logged off 23:39 GMT
**<al>Algore@Vice_President.whitehouse.gov logged off 23:39 GMT^Z

Next	Prev	Insert	setWorkform	Edit	Jump	
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RANDOM WALK

PERHAPS it's just a coincidence, but Treasury-bond yields peaked at 8.16 per cent on November 7, the day before the Republicans swept Congress. Since then, long-term interest rates have fallen to just above 7.5 per cent, even while Fed Chairman Alan Greenspan has raised the federal-funds rate to 6 per cent from a pre-election level of 4.75 per cent. As a result, the spread between bond yields and money-market rates has narrowed from 340 to 155 basis points.

A flatter yield curve usually signals lower inflation expectations, and that is consistent with the pattern of slower growth in high-powered money created by the Fed. Annualized growth in the key measure known as Federal Reserve credit—the central bank's balance sheet of commercial bank loans and Treasury security investments—dropped from 14 per cent in late 1993 to only 5.5 per cent during the past six months. This is not as tight as in 1989–90, when Fed credit dropped to 3 per cent growth prior to 1990's recessionary tax increases, but it is substantially tighter than the easy money Greenspan provided in 1992–93.

While some inflationary pressures may be developing from the pre-election policy mix of higher taxes and easy money, inflation should not exceed 4 per cent, a rate financial markets have probably anticipated already. The gold price remains below $380, held back by the slowdown in money supply. Meanwhile, the demand for money should be bolstered by the new Gingrich policy mix of shrinking government, lowering the capital-gains-tax rate, and imposing a moratorium on new regulatory costs, all of which will raise economic returns and enhance money value. Another sign of improvement in America's long-run potential to grow is the recent 10 per cent jump in stock-market prices, with the Dow exceeding 4,000. In short, since November 8, America's economic future looks brighter because its economic policies are better. Many of my friends in the investment community have underestimated the Gingrich bull market.

■ Doubting Thomases should pay attention to recent newspaper headlines. "House Republicans Target Housing, National Service," reports the *Washington Post*, describing a $17-billion rescission of unspent 1995 appropriations. On the same day the *New York Times*'s front page noted more fiscal progress with "Balanced Budget Nears 67 Votes Needed in Senate." A story in the back pages of the *Times* reported on stiff cuts in appropriations for the Departments of Housing, Health and Human Services, Labor, Commerce, and Education. The venerable *Wall Street Journal* editorial page, commenting on the first half of Newt Gingrich's hundred-day assault on the Washington status quo, declared: "GOP 50, Democrats 0."

Newsletter writers and many investment professionals were bearish on stocks at the beginning of the year, spending too much time on the length of Alan Greenspan's toenails or other minutiae, thereby missing the big picture. A few weeks ago "Gekko's Guide to Prosperity" predicted that the 104th Congress would produce a bull market. Of course, temporary profit slowdowns, cyclical recession threats, or minor inflation spurts will slow down the bull. And I hope the GOP will not forget its promises to promote pro-growth tax cuts along with efforts to shrink government. But if the Contract with America is implemented, new budget, tax, regulatory, and social policies will strengthen the nation and propel the Dow to 10,000 by the end of the decade. You heard it here first.

■ It used to be said that banks were places that lent money only to people who didn't need loans. Nowadays, thanks to a series of new government regulatory policies, banks are becoming places that lend money only to people who can't afford loans. This is bad news not just for bank stockholders but also for taxpayers, who guarantee bank deposits and are thus ultimately liable for hundreds of billions of dollars of potential losses.

The crux of the problem is that state and federal lawmakers can't decide whether a bank should be a for-profit lending institution or a social-welfare agency. The most obvious example is the recent spate of lawsuits against banks for allegedly discriminatory lending practices. James McLaughlin of the American Bankers Association says the Justice Department is "developing law by consent decree." Paul Craig Roberts of the Institute for Political Economy complains that the government has the power to "hold all banks liable to sham suits up to the approximate cost of the bank's legal defense." It's better to make a questionable loan to a member of a socially disadvantaged group than to risk a baseless but costly inquiry from Justice Department do-gooders.

In the latest injection of political correctness into the banking industry, *American Banker* reports, eight states have passed laws "forcing banks to offer low-cost checking accounts" to "give low-income customers greater access to banking services." New York, which approved such a law last year, wants to require banks to offer checking accounts with a minimum balance of $1 and 12 free withdrawals. (That's 12.5 cents per withdrawal on the minimum account.) Many banks don't offer such low-deposit checking accounts for the simple reason that they lose money on them. Requiring them to do so is as absurd as requiring grocery stores to sell food to the poor for less than the wholesale price. —GEKKO

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Tout Newt

RICHARD BROOKHISER

NEWT GINGRICH'S reading list for Republican congressmen is already having an effect. A mover and shaker, one of the Golden Horde that has descended on the capital, told me she had begun *Democracy in America*. "I'm on page 73," she said gallantly. "Small print!" Only nine hundred pages to go.

What do Newt's books tell us about his mind? We need the help because the mind in question is fertile, quirky, and opaque. I first interviewed Gingrich during the 1984 campaign; custom has not staled his infinite variety. "Learning is hard," he told me then. "The more we tell poor people there is an easy way the more we trap them. . . . The voters of Bavaria and Kyoto matter as much as those of Atlanta. . . . Our goal in life is to make Bangladesh resemble Dallas. . . . What is our positive alternative? In the Hegelian sense, what is our antithesis?" In the normal sense, what is his thesis? Newt's books give us a clue.

The list obviously breaks down into Founders and Contemporaries, but there is further division of labor within the sections. The Declaration explains why we are a country; *The Federalist* describes how to make the country work. Tocqueville is an intelligent foreigner, asking fifty years later how we were doing, and how we were likely to do. The Washington biography tells how the United States actually came to be, through the agency of a hero.

The first thing to notice about the Founders' division is that the country Tocqueville visited was already different from the one Jefferson et al. had made. The Founders thought government had some responsibility for moral education. Washington wanted a national university in the as yet unbuilt capital, where future leaders could attend the debates in Congress and study republican virtue. (He assumed there would be a connection.) By the time Tocqueville made his visit, Americans were strongly moralistic, but their morals percolated up from their religions and their private lives, with little encouragement from the state. Maybe they had learned something. Maybe they had lost something too.

But the most striking thing about Gingrich's first team is the inclusion of Flexner. Verbalists and theorists have a way of assuming that ideas are self-enacting. We think them, therefore they are. But political ideas require statesmen to make them real, and great statesmen must be great men.

Roman Genn

The Indispensable Man—a one-volume version of Flexner's four-volume biography—understands Washington's greatness moderately well. In one respect, Flexner is the best biographer Washington has ever had, for he brings to the most *visual* of Presidents the eye of an art historian. Flexner's most serious flaw, however, is a consistent underrating of Washington's interest in ideas. Having just argued that great men are superior to great ideas, I must seem to be contradicting myself. But part of a great man's greatness is his understanding of ideas. A would-be great man without confident access to them ends up like Boris Yeltsin, sliding into a morass of improvisation and bad advice.

It's the modern stuff on Gingrich's list, however—the computer nerds, the business wonks, and the futurists—that has gotten the most attention, and that strikes many people, not all of them liberals, as problematic. The subject of the last four books is the modern organization, whether a single company or a civilization. The authors attack the theme with very different degrees of success.

The best book of the lot is Mary Boone's. She asked 16 executives, from organizations ranging from the Senate to Tootsie Roll Industries, how computers have affected them and their work, and presents their experience with a minimum of hype. Her executives say that e-mail is more flexible than the telephone, and more communicative than letters or memos. Print snobs should realize that e-mail competes not with Jane Austen, but with the typical business memo. Miss Boone's sources also testify that a well designed computer system can act as an extra set of fingertips on the piano keys of information. Miss Boone thinks all this has implications for the structure of businesses—less middle management, flat-

***Declaration of Independence*, by Thomas Jefferson**

***The Federalist*, by Alexander Hamilton, John Jay, and James Madison**

***Democracy in America*, by Alexis de Tocqueville**

***Washington: The Indispensable Man*, by James Thomas Flexner (Little, Brown)**

***Leadership and the Computer*, by Mary E. Boone (Prima Publishing)**

***The Effective Executive*, by Peter F. Drucker (Harper Business)**

***Working without a Net: How to Survive and Thrive in Today's High Risk Business World*, by Morris R. Shechtman (Prentice Hall)**

***Creating a New Civilization: The Politics of the Third Wave*, by Alvin and Heidi Toffler (Progress and Freedom Foundation)**

Mr. Brookhiser is a senior editor at NR.

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ter organizations that are coached rather than directed from on high—but her conclusions flow believably from her reporting.

Morris Shechtman and Peter Drucker are two management consultants, who frequently disagree. Mr. Drucker believes that if a jerk can do a job, lock him up in a closet and let him do it, while Mr. Shechtman insists that everyone in an organization should share a common ethos. Drucker, like Mary Boone, favors flatter organizations; Shechtman believes that pyramidal hierarchies are required to give needed guidance. There is an authoritarian streak to Shechtman, only partly concealed by a layer of psychological talk, which is one reason why I prefer Drucker. The other is that Drucker writes better. Shechtman, however, makes the point that the goals of people and of groups must flow from their missions, which arise from their values. This is a necessary antidote to the vertiginous sense one gets that Drucker could as easily advise John Gotti as Mother Teresa.

Alvin and Heidi Toffler, though they are the most abstract of Newt's authors, are very grounded indeed. Before advising a don or a saint, they would want to know what wave of history he or she belonged to. In the Foreword to *Creating a New Civilization*, Gingrich says the Tofflers have been "writing about the future for a quarter century." Does the futurism of 1970 hold up better than the lava lamp?

The Tofflers make a number of specific predictions and analyses. They see the leaner, meaner organizations discussed by Miss Boone and Mr. Drucker as prototypes for all social units, which can be decentralized, "de-massified," and "deliberately hollowed out." They apply this model to government and to the family, which has gotten them some bad ink during the Republican takeover. Gingrich was echoing the Tofflers when he speculated that majority rule might be passé, and social conservatives have noticed that the Tofflers take shots at "the values and morality of the 1950s, a time before universal television, before the birth-control pill." This book qualifies these pugnacious opinions somewhat: demassified government could lead to devolution along the lines of the Tenth Amendment as well as to balkanization along the lines of Lani Guinier, and the Tofflers call for a revival of extended families, and family autonomy: "forget peripheral issues, accept the diversity, and return important tasks to the household. Oh yes, and make sure the parent keeps control of the remote." Such backing and filling also explains the Tofflers' success as seers: big bull's-eyes make good marksmen.

Everything the Tofflers say is trivialized by their theory of history. Humanity has gone through three waves: agriculture, industrialism, and the wave that's happening now, the information age. I first heard the big theory in my interview with Gingrich ten years ago, and that was the best way to be exposed to it. It's the kind of thought you come up with at a dinner party when you've had a few drinks and you're on a roll. It's sweeping, plausible, partly true; in that context, the holes don't matter. But the Tofflers have built an entire world view on it.

It looks like history, but it is really trendology, or the game of threes: posit two eras, and predict a third. If you win, you not only foresee the future, you own it. This is why the witches played the game on Macbeth, hailing him as Thane of Glamis, Thane of Cawdor, and "King hereafter." In the hands of the Tofflers, the game of threes will probably have less drastic results, issuing only in verbiage and confusion.

Trendology ignores the persistence of previous eras into their successors. The Tofflers acknowledge that the clash of one wave and the next causes turbulence, but they don't see that the turbulence lasts for millennia. The era before the first wave, the era of hunting and gathering, still shapes our notions of warfare and masculinity, so that nearly half the men elected President in second-wave America had fought in battle. Dying and reviving gods, the myths of agriculture, haunt Christmas trees and *The Waste Land*. This is a criticism of trendology on its own terms. The more serious criticism is that trendology's terms ignore the question of truth, whether framed by philosophers, prophets, or poets. Plato, St. Paul, and Shakespeare would all be baffled by the Tofflers. So would the authors on Gingrich's first team, who cared passionately that the United States be not just the coming thing, but the right thing. "We hold these *truths* to be self-evident . . ."

The lacuna of *The Indispensable Man* is pertinent here. Although Washington had only the equivalent of a grade-school education, he read all his life, and most of what he read was first rate. He kept up with the political literature of North America for over thirty years, when it was of the highest order. When he needed elaboration he turned to George Mason, Madison, Hamilton. He did not read the prophecies of Condorcet, or Nostradamus.

Why do the critical faculties that guide Gingrich in judging men who lived before 1840 desert him when he comes to the Tofflers? One reason is curiosity. Considering Gingrich's love of dinosaurs, make that *boyish curiosity*. Boyish curiosity is a good thing; it precedes all inquiry. Washington, D.C., the most timid and status-conscious of cities, starves for lack of it. Tip O'Neill never read the Tofflers, not because he was too wise, but because he was too busy robbing civilians.

Another reason is Gingrich's rise through the ranks since 1978, and the Republicans he had to supplant and outflank. Before Ronald Reagan and Jack Kemp, the congressional GOP was a party of inertia and self-defeat. I remember once hearing former Minority Leader Bob Michel reminisce about his first political experience: passing out sunflower buttons for Alf Landon. No wonder he expects to get kicked in the head, I thought. In the long years of fretting as the minority of the minority, Gingrich had to sustain himself with the hope that he was the wave of the future—and there were the Tofflers, to tell him that it was so.

Curiosity and hope explain Newt Gingrich's strange weakness for trendology, but they do not excuse it. Statesmanship is hard. The more we tell politicians there is an easy way, the more we trap them. If the Speaker wants to fulfill the mission he has set himself, he and his followers will have to bring the second half of their reading list up to the level of the first. □

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Strange? Just Us

THEODORE B. OLSON

THIS BOOK was billed as the Book of Revelation about the Clarence Thomas–Anita Hill imbroglio. *Strange Justice* is based, the authors claim, on "hundreds of interviews and scores of never-before-seen documents." As if brought to us by Indiana Jones, the project has survived "a family death, a marriage, a birth, two cross-country moves, an earthquake, a fire, and a flood."

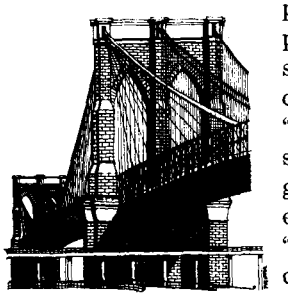
The book's most colorful passages were published in advance, to much hoopla, by the *Wall Street Journal*, and the authors, Jane Mayer and Jill Abramson, made saturation appearances on the airwaves to discuss their discoveries with gushingly friendly interviewers. The authors took the precaution, however, of giving their most trumpeted interviews before the book was available to questioners, and limiting their later appearances to promotional events carefully screened against the presence of anyone—such as David Brock, author of *The Real Anita Hill*—knowledgeable enough to raise hard questions.

Strange Justice: The Selling of Clarence Thomas, by Jane Mayer and Jill Abramson (Houghton Mifflin, 406 pp., $24.95)

The contents of the book make it clear why the authors have been so defensive. In fact, it contains very little that is new and certainly nothing that adds persuasive support to their surprisingly timid thesis: "that the truth in this matter favors [Anita Hill] much more than was apparent at the time of the hearings." Thus, while the authors' point of view is apparent on virtually every page, their most forceful conclusions are trivial, largely immaterial, and thinly supported. The inference that emerges most compellingly from this book is that Mr. Thomas, not Miss Hill, was telling the truth.

Like the famous *New Yorker* map of America that portrays most of the nation on the Eastern Seaboard, principally in Manhattan, Miss Mayer and Miss Abramson see America's political landscape as divided between the reasonable Middle and the intimidating Right. They refer constantly to the "Right," the "far Right," the "extreme Right," "conservatives," "ultra conservatives," the "Christian Right," the "Religious Right," the "New Right," and most terrifying of all, the "Armies of the Right." No need to guess what the authors look for when they peer under their beds at night.

This outlook, combined with their breathless discovery that Clarence Thomas was the subject of intense advocacy by his supporters, leads to their subtitle, *The Selling of Clarence Thomas*. Of course, to make this point, the authors must overlook entirely the battalions of liberal reporters, congressional staffers, and left-wing interest groups that took to the field to find, report, and repeat virtually anything to stop the Thomas confirmation. Therefore, the authors' "full story" is most certainly not the result of an "exhaustive investigation," for it ignores entirely the unprecedented, concerted, and unprincipled effort to destroy Clarence Thomas.



Given this focus, it is not surprising that *Strange Justice* finds little that is new about Anita Hill. And what the authors do find, they quickly brush aside. For example, in a chapter called "Talking Wild," they report on Miss Hill's upbringing: "Propriety to the point of repression was a family trait." "Sex was a taboo subject." Miss Hill was "prickly and brittle," was "petulant," possessed "rigid mores," was "uptight or even prissy," "sent mixed signals, making misunderstandings likely," and was "quick to take offense."

Despite all this, and despite "questions that can be raised relative to the accuracy of her memory and clarity of her judgment," the authors resolutely refuse to consider whether Miss Hill somehow transformed innocuous or innocent remarks into "the most humiliating sexual conduct she had ever experienced." Given the otherwise inexplicable conflict between her version of events and the parade of witnesses who supported Clarence Thomas, it is curious that the authors did not explore the most obvious explanation.

For example, Mr. Thomas denied ever having made the pubic-hair-on-the-Coke-can remark. Miss Hill denied that she ever repeated this alleged private conversation to anyone else. Yet the book contends that several people at the Equal Employment Opportunity Commission (where Miss Hill worked for Mr. Thomas) had apparently heard such a "story"—though none of them heard it directly from Clarence Thomas. Is it possible that Miss Hill heard the pubic-hair story through the EEOC grapevine and believed that it was attributable to a remark made by Mr. Thomas? Since no one but her ever heard him make such a statement, why couldn't it be the prissy, quick-to-be-offended witness with the bad memory who got it wrong?

The authors similarly mangle their own investigation of Anita Hill's 11-month law-firm tenure before her job with Clarence Thomas. This job was at one of the "most sought-after law firms in the country." During her brief time there, the authors reveal, Miss Hill was believed to be "romantically involved" with one of the firm's married partners, despite the firm's policy against such liaisons. Her work was perceived by superiors as "satisfactory, but not outstanding." Indeed, some graded her work as "uneven," and there were "more than a few criticisms." She tended to "disappear" into the library, "left work altogether" during one emergency assignment, and produced fewer "billable hours" than any of the firm's other associates.

Any objective partner at any prominent law firm would have told Miss Mayer and Miss Abramson that only a miracle could have saved Anita Hill after such a miserable beginning, and would have had little trouble believing the affidavit of the partner who said she had been encouraged to leave. But the authors draw the revealingly untenable conclusion that Miss Hill was "not in any trouble" at the firm.

The biggest surprise of *Strange Justice* is what Miss Mayer and Miss Abramson fail to establish. They obviously were prepared to strain mightily. But their much-published claim that

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Thomas papered his walls with *Playboy* centerfolds comes from a witness who later told one television interviewer that she saw one centerfold, and told another there may have been two. *Playboy*, meanwhile, is scarcely hard-core pornography. During Thomas's student days, Yale Law School was exhibiting *Deep Throat* and *Behind the Green Door*, cinema that certainly makes *Playboy* seem tame.

The book offers no evidence that Clarence Thomas ever sought dates from employees at any of his other jobs, or that he ever actually dated *anyone* at the EEOC. Thus, there is little corroborative evidence of sexual harassment. The one witness *Strange Justice* offers to support Miss Hill's version left five consecutive jobs under a cloud, and never felt the slightest bit intimidated by Thomas, because, as the authors put it, she had "been fending off male advances for years."

Strange Justice substantiates one bit of Clarence Thomas's testimony that has been widely challenged as incredible, and was characterized by Miss Mayer and Miss Abramson themselves as "blatant obfuscation." Thomas testified that he had never debated the merits of the *Roe* v. *Wade* abortion decision. The authors ultimately have to concede that not one of their hundreds of interviewees said he or she had heard Thomas discuss the case. They admit, "no one recalled [Thomas] expressing himself on *Roe*."

Strange Justice is a strange book. It proves that after four separate Senate confirmations of Clarence Thomas, and four months of highly publicized digging for dirt on the nominee, it still took a concentrated effort of importuning by a host of liberal Senate staffers and interest-group investigators to wrest from a reluctant Anita Hill the story that nearly destroyed Clarence Thomas. Three years later, the peculiar testimony of a quick-to-be-offended, priggish, petulant witness with a self-acknowledged "repressed memory" is no more credible than it was then. □

Wright and Wrong

RICHARD LYNN

ROBERT WRIGHT attempts to explain man as a moral animal in terms of "evolutionary psychology," a nascent academic discipline based on the principle that humans are programmed by evolution to secure the replication of their genes. They do this primarily by having and caring for children and by helping their kinsfolk and other members of their ethnic or racial group.

Evolutionary psychology is therefore nothing other than the more familiar sociobiology, but Mr. Wright says he prefers not to use that term because it has conservative connotations. I think this is a mistake. The connotations of a body of knowledge cannot be changed simply by giving it a new name.

His treatment has two merits and three weaknesses. The first of its merits is that Mr. Wright has correctly discerned that the sociobiological model of human behavior is a great advance on its predecessor, the cultural determinist theory, which held that our behavior is entirely determined by the cultural environment in which we are raised. The leading lights of this theory were such people as Margaret Mead and B. F. Skinner, who believed that humans are infinitely malleable.

The second merit of Mr. Wright's book is that he gives an accurate account of some of sociobiology's principal propositions. He is, for instance, sound on the differences between men and women. Contrary to the assertions of cultural determinists, sociobiology teaches that men and women are psychologically different. For one thing, men are by nature more promiscuous than women because this way they can increase the number of their offspring; the same is not possible for women, so having multiple partners does not secure them an evolutionary advantage.

The Moral Animal: Why We Are the Way We Are, by Robert Wright (Pantheon, 467 pp., $27.50)

However, Mr. Wright's book also has three weaknesses. The first of these is that the conclusions of sociobiology are presented through rose-tinted spectacles. Mr. Wright asserts that sociobiology teaches that humans are naturally good, because they are biologically programmed to help one another. How comforting!

This, however, is a profound misunderstanding of the message of sociobiology, which is rather that human beings are amoral or immoral animals. Sociobiology teaches that humans are programmed to promote the survival of their own genes and that they assist others only insofar as this is likely to serve the genetic objective. A much better title for the book would have been *The Selfish Gene*, but as this has already been used by Richard Dawkins, Mr. Wright might have called his book *The Amoral Animal*.

Because of his wish to promote the view that sociobiology teaches that humans are naturally moral animals, Mr. Wright omits or summarily dismisses those propositions of sociobiology which show that the human being is a rather nasty animal. The first of these is that human males are biologically programmed to stratify their societies into status hierarchies. Males compete to become top dog, or at least to become middle dogs. The top dogs allocate privileges primarily to themselves. They fight off challenges from underdogs, and maintain their status by cunning, the inculcation of fear, and brute force.

Sociobiologists have shown that these status hierarchies are present among all social animals and that male striving for status is programmed by the hormone testosterone. It is not particularly pretty to see powerful males grabbing and keeping the goodies largely for themselves, but sociobiology teaches that this is the way men are.

The second major respect in which we are hardly moral animals is our propensity for killing one another. As animals go, humans are particularly prone to kill one another, particularly in group conflicts and wars. Indeed, our only rivals in this regard in the entire animal kingdom are the ants.

Sociobiologists have concluded that the human propensity for warfare and even genocide is biologically programmed. The explanation is that if we can exterminate other groups, we can move into their territory. This means that there are going to be more of us and our genes and fewer of them and their genes. This is particularly

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the case when the rival group belongs to a different race from our own, because its members have few genes in common with us. This hardly befits "the moral animal." Mr. Wright presents a sanitized version of sociobiology in which much has been suppressed.

The second weakness of Mr. Wright's book lies in his discussion of the implications of sociobiology for political theory. As sociobiology developed in the 1970s it was quickly realized that it confirmed the conservative view of human nature. If human males are biologically programmed to compete for rank in status hierarchies, the implication is that the egalitarian utopias cherished by the liberal Left, in which all men are equals, won't work. They are against human nature. Conservatives always suspected this, and sociobiology corroborates their insight.

Similarly, sociobiology teaches that the ideal of a multiracial society in which all races live in harmony is another liberal-Left pipe dream. Humans are biologically programmed for group conflict, particularly between races that are genetically differentiated. Sociobiology teaches that we can forget the ideal of racial harmony. The best we can do is try to mitigate racial conflict as much as possible.

Liberal-Left academics were among the first to realize that sociobiology has profoundly conservative implications for political theory. This is why they mounted such a vigorous campaign against it, proclaiming it a fascist pseudo-science. Curiously, Mr. Wright does not go along with this conclusion. Time and again he asserts that sociobiology does not confirm conservative political theory. But this is not an arguable position and he is unable to make a case for it. In fact he must be the only person who has made a fairly serious study of sociobiology and yet is unwilling to concede that it confirms the conservative view of human nature.

The intellectual problem for the liberal Left now is to take this on board and regroup. Its members are in the same position as the Church after the publication of *The Origin of Species*. Darwin's book appeared to show that much of the Bible is plain wrong and therefore posed a serious threat to Christian belief. Some people reacted to this by attempting to suppress the implications of Darwinism—the Robert Wright strategy. Others realized that the only hope was to accept the theory and jettison those beliefs that were obviously no longer tenable.

The liberal Left faces the same problem with sociobiology. Its task is to take seriously the conclusions of sociobiology regarding the dark side of human nature and think through what of its agenda can be salvaged. This book is a long way from meeting the case.

The book's third and perhaps most fundamental weakness is its failure to come to grips with the problem that, while sociobiology teaches that man has an inherent propensity to act selfishly, man is nevertheless a moral animal. Most human beings develop a conscience which dictates their behavior in countless directions. So the problem for someone writing a book called *The Moral Animal* is to explain how conscience is acquired.

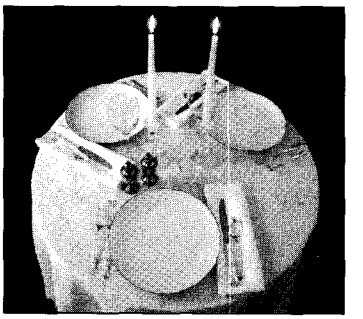
Unfortunately for Mr. Wright, sociobiology does not attempt to explain things like this. To understand how humans develop a conscience one could shift to Pavlovian conditioning theory, which says that parents condition their children by approval and disapproval to behave in acceptable ways, or to modeling theory, which says that children adopt their parents as models for a wide range of behaviors and values. If Robert Wright wished to explain why man is a uniquely moral animal, he chose the wrong theory. □

Kindred Spirits, Not Very Kind

DIGBY ANDERSON

THERE'S a curious fact about recipes, which cookery writers conveniently ignore. It is that there are enough recipes already, and enough good ones, to keep any competent cook happy for the rest of his life. There is no need for any more. The recipe writers can simply pack it in and do something else.

The same is true of novels and poetry. After three centuries we now have enough excellent novels to keep



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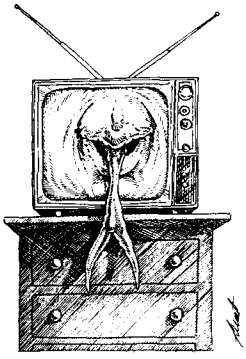
the most voracious reader occupied till the end of his days. Every hour we waste reading Margaret Drabble is an hour not reading Jane Austen or P. G. Wodehouse. Most contemporary writers clearly should pack it in. They are not needed.

There are exceptions to this fact; and it is a fact, not an opinion. Journalism, especially humorous journalism, is one of them. Several enterprising writers of this century have done journalism rather than novels not only because it pays better but because they have thought it the genre of the time, the place where their talents would shine best. Certainly they are needed. Not only are essay- and review-writers of the caliber of Florence King and H. L. Mencken very rare but, unlike novelists, journalists do not have to compete with (usually much better) dead rivals, since they write on contemporary topics—among others, Mencken on Prohibition or the war, Miss King on Seventies feminism or contemporary pornographic styles. They do not say anything *new*, of course. Conservative readers do not want new things said. Old things are better. But they do apply old wisdoms to new topics.



A Second Mencken Chrestomathy, by H. L. Mencken, edited by Terry Teachout (Knopf, 491 pp., $30)

The Florence King Reader, by Florence King, edited by Calvert Morgan (St. Martin's, 417 pp., $23.95)

Of these two volumes of collected writings, Mencken's is the less satisfactory. His writing is very uneven. At one extreme are the inventiveness and sustained argument for "barbaric" punishments ("Jack Ketch as Eugenist" and others) with the magnificent proposal for a return to outlawry: "a man who chooses the career of an outlaw is made one officially. From that moment he has no rights whatever. Any citizen may beat him, wound him, and even kill him without challenge." At the other is the essay on "The Fat Man." It's a topic with enormous controversial and humorous potential, which Mencken totally fails to exploit. And Mencken does not read well when he is collected. One begins to see the weakness of that supposedly hard and realistic world view he was so proud of. Beneath the admirable cynicism is a tedious and shallow nineteenth-century rationalism. Look, for instance, on page 480, at the essay that starts "I believe unreservedly only in what may be demonstrated scientifically." Moreover, the more one explores Mencken's wit, the more it turns out to be epigrammatic rather than argumentative. It's a skill at one-liners, not at essays. The best essay in the collection is the shortest, all of 11 words on "Liberalism": "A liberal is one who is willing to believe anything twice."

Miss King is an essayist and a brilliant one. Her collection includes essays, reviews, "anthropological" studies such as "Southern Ladies and Gentlemen," and her novel, *When Sisterhood Was in Flower*. But whatever the apparent literary form, her skill and joy are in a huge number of quite short, shall we call them, sketches. No one would claim her novel was wonderfully structured as a novel, but what writing is to be found in it! In the very best sense of the word, Miss King is a journalist.

Sisterhood contains, for instance, sharp and hilarious observations on how to write a pornographic novel, or rather how to fill the pages with as few words as possible. First there are an inordinate number of end pages, front and back; then you have every chapter ending with a blank page, the headings of chapters dropped to a few lines from the bottom of the page, and lots of very short chapters to maximize the advantages gained from such ruses. Then

> pepper your story with newspaper headlines, ads, movie marquees, and signs so that you can center them and double space around them. Like this:
>
> BEAVER SHOTS
>
> After you get the sign painted, have your character stare at it for a while, unable to believe what he sees because he's doped up. . . . Then have him close one eye and reread it so that you can repeat the sign:
>
> BEAVER SHOTS
>
> [This is why] porn characters, who show no caution in life's larger moments, always read labels with meticulous scrutiny:
>
> K-Y JELLY
>
> . . . The more they repeat themselves, pause, think, and start over, the more paragraphs you can indent:
>
> She's a natural blonde, he thought.
> A *real* natural blonde.
> Was she ever!
> "Wow," he breathed . . .
> There was no mistaking it.
> No way!
> "Honey," he said, "you're a real natural blonde."
>
> . . . Then there are the groans, moans, screams, and grunts: . . . "YESSSS

look drab beside these pieces. Even Miss King's own introductions to the individual sections add little and read rather limply. I suspect she could parody both his and her own introductions. But one comment by Mr. Morgan should be denounced immediately. He says, "I don't think you'll be able to lay down *The Florence King Reader* without finishing it, either."

I understand why these pieces had to be collected as a book, another blasted book. The reader, however, does not have to cooperate and read them all together. He should do the exact opposite of what Mr. Morgan says. For the pieces deserve to be read and savored one at a time, each separated from the next by a bottle of claret, five courses, and a sleep. □

The Secret of His Success

JAMES GARDNER

SURELY Roberto Calasso's *The Ruin of Kasch* is the most thorough waste of time I've experienced in many months. There is a sadness about the book. For one starts reading it, having first been seduced by the reviews, in the honest hope that something will come from one's investing so much time in it. But before long —say, by the second page—it is painfully apparent that the book is going nowhere. "No," the reader says to himself, "no pleasure will be had today. Nothing will be learnt and nothing remembered." And if the reader subscribes to the Puritan ethic that requires one to finish every book one starts, he has many unhappy and unremunerative hours ahead of him.

The jacket of *The Ruin of Kasch* contains, by the way, what is easily the most hubristic, the most hyperbolic, and finally the most idiotic blurb I have ever read. Joseph Brodsky, who knows a thing or two about being overrated, calls Mr. Calasso "a crucible: he mingles East and West; he extracts essences, and the aim is infinity. I would say . . . that Calasso is the only man on the Continent with whom conversation is totally rewarding." First of all, we must question whether any conversation can be totally rewarding if Mr. Brodsky is one of the participants. And what on earth does he mean by "the aim is infinity"?

The Ruin of Kasch, by Roberto Calasso (Harvard, 352 pp., $24.95)

And yet, for all that, how one wishes one were the author of this book! The presumption of authorial substance, intelligence, and style is so great that his admirers will insist on these virtues even when presented with repeated and irrefragable evidence of their corresponding vices. Mr. Calasso is incapable of maintaining a narrative line, and yet he is appreciated as a storyteller. He understands nothing of the characters whose story he has committed himself to telling, yet he is considered a keen student of human nature. He cannot maintain or develop a thought for more than a page, and yet he is considered deep. Though he has but one note on his flimsy aeolian harp, and that a monotonous drone of well-intentioned detachment, he is deemed a great stylist.

The Ruin of Kasch is one of those trumped-up books that emerge about every five years, which appear to be about everything but in fact are about nothing. Its purported theme is the life and character of Talleyrand, Napoleon's foreign minister. The book is chock-a-block with quotations, but not much in the way of narrative. It is astonishing that although Calasso presents us with many pages concerning Talleyrand, one is left knowing precious little about him, and with no more sense of the man than one has of a figure in Madame Tussaud's. He is only a projection of certain things that seem to interest the author. The book returns periodically to Talleyrand after the author has thoroughly bored his readers and himself with some other subject—mythology, sociology, religion, history, art, anthropology. Along the way there are meditations on the cabala—works of this sort always have something on the cabala—Walter

Mr. Gardner is NR*'s art critic and the author of* Culture or Trash? *(Birch Lane).*

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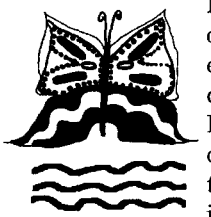
Benjamin, Karl Marx, Thucydides, Chateaubriand, Goethe, the Arab–Israeli wars, and, naturally, Aztec art. Is this a novel, or a philosophical treatise? It doesn't matter since, in either case, the book is lousy.



Now it is bad enough that Mr. Calasso has nothing to say. But it is how he says it that is really intolerable. His tone is gentle and reasonable, as of one who merely invites the reader to examine such intellectual artifacts as have prepossessed the author, to share in his admiration and exploration. He likes, he enjoys, he is mightily pleased, to express universal laws. Sadly, to quote him out of context cannot possibly reveal the way that everything feels out of context even when it is in context. It might even make you think he is really saying something: "Sacrifice creates the most tenacious of bonds between society and what is external to it." "As we move backward in history, we see that guilt and evil recede ever further from the wicked intentions of the subject and assume the majestic reality of number." And how about this nugget: "The fabric of the articulated has lacunae." And there are close to four hundred pages more where that came from. It is only when the reader keeps reaching for the golden fruit that seems to be extended to him, and keeps finding that it turns to ash in his mouth, that, if he is honest, he throws the book down in disgust. After all, it is easier to praise the book than to read it. Could that be the secret of Calasso's success?

The title comes from a fable that is told in the course of the book, about a mythical kingdom. Presumably we are supposed to be charmed by the *faux naïve* fabulism of the narrative. We are not. The only interesting thing about this tale, and about the whole book, and about the celebrated *Marriage of Cadmus and Harmony* (which the author wrote much later, but which was translated from the Italian and published here first), is the way they exemplify a moment in our culture. Nowadays the late eighteenth and early nineteenth centuries are in fashion. One sees this in Susan Sontag's *Volcano Lover*, in Corigliano's opera *The Ghosts of Versailles*, as well as in the forgettable paintings of Carlo Maria Mariani, to cite only a few of many examples.

But do not be so rash as to think that this taste has anything to do with Dr. Johnson or Edmund Burke. The reason for this popularity is that the age in question, the revolutionary and Napoleonic era, seems to be one of crisis between the modern and the premodern, the industrial and the pre-industrial. It is the first moment in which our narcissistic society can see the emergence of anything like itself. But the classicism it sells us is spurious and third-hand. It is the classicism of Mengs and Canova and André Chénier—that is, a pale late-eighteenth-century gloss on classicism, rather than the true, the deep, the powerful source of Western culture. It is the etiolated, anemic, compromised preciosity of this style that so endears itself to postmodern appetites. It is an insidious attack from within, a camping attitude of reverence for something that one essentially cannot understand or truly care about. Until very recently, most of the artifacts of this wayward style were merely a brief chapter in the history of taste. A generation hence, doubtless, they will once again be relegated to that status, and Roberto Calasso with them. □

FILM

Women Bonding; Woman Shooting

JOHN SIMON

IT IS A RARE and wonderful thing when an American movie comes along that is adult in every respect. Such a one is ***Boys on the Side***, and I am quite prepared to be lenient about minor flaws in a work brimful of closely observed life, spontaneous feeling, pungent dialogue, and proper respect for the unpredictable. From the first moment to the last, the film exudes a sometimes quiet, sometimes rambunctious authenticity that does not grab you by the lapel, but slowly infiltrates the heart. You leave with the feeling of having acquired three new friends in the film's three heroines.

Jane (Whoopi Goldberg) is a second-rate barroom singer whose act in New York bombs, and who decides to try her luck in Los Angeles; she answers an ad for a co-driver to the Coast, placed by Robin (Mary-Louise Parker), her exact opposite. Jane is black, tough, and lesbian; Robin, white, proper, middle-class, a real-estate agent who thinks she can do better in San Diego. A relationship of Jane's has just broken up; Robin seems hardly to have had any kind of emotional experience. And so the cynical Jane and the finicky Robin set out in the latter's minivan. They amaze and amuse each other with their differences: Robin with her love for the songs of the Carpenters and her washing Jane's earphones with cologne before using them; Jane with her laughing indifference to a romantic movie on TV that makes Robin cry.

They head first for Pittsburgh, where Jane wants to look up Holly (Drew Barrymore), on whom she once had an unrequited crush. Holly lives in an indescribably messy apartment with Nick, a thug who pushes not only drugs but also her—against the wall, the better to pummel her. He roughs up Jane, too, when she comes to her friend's defense. To everyone's wonder, Robin stops the fighting with the force of reason, but when Nick becomes violent again, Holly clobbers him with a baseball bat, and the women tape him to a chair. At Robin's insistence, Holly takes only half of the drug money as the trio heads for St. Louis.

But Holly misses Nick, and catches a bus back to Pittsburgh. The other two catch a headline about a drug dealer found dead (the aftereffect of Holly's above-average batting), and they chase after her bus and comically get her off it. The camaraderie among them grows. They have droll little adventures and occasional surprises—as when Holly lets it slip out that Jane is a lesbian or when, in Tucson, Robin requires brief hospitalization: she is HIV-positive from her one fling with a New York bartender. So the girls decide to settle down in Tucson for a while; Holly falls for a cop, and Jane is in love with Robin.

I must not tell you more, though even what I have told you is not what

Mr. Simon is NR*'s film critic.*

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really matters. What makes the movie so interesting is the small incidents, the exchanges of banter containing the odd occasional sting of lancinating truth, and the leisurely yet madcap way in which these three keep getting closer to one another—indeed, become family. Only Robin has a real mother, in San Diego, but one from whom she is totally estranged. Now each woman has two sisters as they start forging new lives for themselves. And everything could be lovely if Holly did not confess to her policeman lover, if Jane weren't so hopelessly in love with the straight Robin, and if AIDS did not act up in Robin just as she was coming fully alive.

The astounding thing is that this so correctly perceived story of feminine bonding, evoked in such telling and persuasive detail, was written by a man (Don Roos) and directed by a man (Herbert Ross). Throughout, Robin contributes an idealism that becomes more realistic, Jane a wisecracking skepticism that turns loving and protective of Robin, and Holly a savvy intuition underneath her oversexed ditsiness. But I must stress that nothing that is done or said here is conventional or predictable: the humor, the sadness, the everyday extraordinariness of it are always surprising.

It is, I repeat, all in the details. Details of travel on carefully caught highways, details of teasing or helping one another, details of contacts with passing or persisting strangers. Above all, the pointed or poignant dialogue, often unforcedly witty, and sometimes quite plain, unadorned, and touching. *Boys on the Side* has a remarkable self-assurance about it, whether dealing in light-hearted badinage or encroaching devastation.

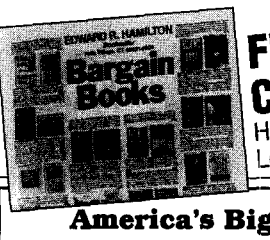
Part of that firmness comes from the solid performances. Whoopi Goldberg, whom I have always cordially disliked, displays here a gift for ironic understatement—a charged look, a corrosive inflection—that works with cool, suggestive incisiveness. Drew Barrymore creates a character out of more familiar material through an earnest naturalness with which she accosts other people's and her own absurdities. And Mary-Louise Parker reaffirms her status as one of our most fetching and affecting actresses: she acts with every part of her body, has oddly evocative resonances in her voice along with a delightful rubato in her delivery, and two huge eyes that seem to revolve worlds inside them.

Praise must also go to Donald E. Thorin for moody cinematography that puts both barroom darkness and outdoor brightness to striking uses, and features marvelous helicopter shots of the open road; to Ken Adam's customary skill in production design, deployed here in humbler locales, very different from the usual epic and exotic ones; and to David Newman's skillful blend of mostly found music. Even the supporting performances—Anita Gillette's doting mother, Dennis Boutsikaris's slimily slick DA, and Matthew McConaughey's sweetly obtuse Tucson cop—are outstanding.

■ At the opposite end of the spectrum, there is an item as phony as filmmaking gets, ***The Quick and the Dead***, co-produced by and starring Sharon Stone. It is a Western written by Simon Moore, an Englishman whose knowledge of the American West is based exclusively on movies, and mostly spaghetti Westerns at that, as witness the cameo appearance of Woody Strode, one of Sergio Leone's favorites. If ever a movie smelled of shameless elucubration, of being sucked out of anywhere from one to ten thumbs, this is it.

Consider only the two basic conceits. First: the mysterious gunslinger, the stranger of few but stinging words—the Gregory Peck or Alan Ladd role—is played here by Sharon Stone. We are to believe that this sexy *chiquita*, who is really a tough *hombre*, can ride and swagger through the Old West as inconspicuous in her artfully designed clothes, artfully designed makeup, and artfully designed persona as if she were Walter Brennan or Ernest Borgnine. No one pays much attention to her, no one makes a pass at her; even the chief villain—called John Herod (!) and played by everybody's favorite supervarmint, Gene Hackman—who invites her to an intimate dinner with seduction contemplated, treats her with courtesy and deference, though by now she is not wearing her cowboy togs, but some drop-dead Lola Montez outfit of the kind she must carry around as a saddlebag-stuffer.

Second: The Game. This Tombstone-like town indulges in a yearly jamboree: the most trigger-happy denizens and visitors are paired off on the barroom blackboard as for a tennis tour-



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nament, except that this is a series of shootouts in the town's only street. In the first few rounds you need merely incapacitate your opponent; starting with the quarterfinals, you are to shoot him (or, in Miss Stone's case, her) dead. This is the kind of blood sport the town's evil boss, John Herod, promotes and participates in, and all that in an underpopulated West where one could ill afford more than the customary shootouts. But English cineasts—perhaps in unconscious response to overpopulated London slums—do come up with ideas of this kind: think of Peter Watkins's *Punishment Park*.

Sam Raimi, who directed, is full of quaint tricks himself. Some are as hoary as jangling-spurred boots bestriding the dirt street in ominous closeup; some ludicrously newfangled, such as shooting (with the camera) the victor in one such duel through the hole he has shot (with a gun) in the head of his victim. We need that kind of cleverness like a hole in the head. There are also various deliberately fudged elements: does Ellen (Sharon Stone) actually spend a night with the Kid (Leonardo DiCaprio, the smarmiest young actor in Hollywood, who could easily pass for Miss Stone's stand-in)? And is this champion gunslinger, junior division, really the bastard son of John Herod, who does him dirt? (One hint: remember Herod in the Bible and the slaughter of the innocents.)

The grossness of the movie is somewhat mitigated by its laughableness, as when Miss Stone parades around her sleazy hotel room in a mid-thigh-length shift. She is not called upon to do much acting, but the way she narrows her eyes to a slit and hisses out a sarcasm redounds to her credit. Hackman just keeps smiling and killing with equal aplomb; his heroic adversary is Russell Crowe (an actor from down under), as a former fellow bandit turned preacher and man of peace, with a properly hangdog look until he reaches for a handgun again, this time in a righteous cause.

Clichés flit through the film: the evil brothel-keeper Eugene Dred (!), and the golden-hearted whore in love with the Kid, also the good old doctor who . . . but enough. Both this movie and *Boys on the Side* were shot around Tucson, and both contain flashbacks to a heroine's childhood memories. Otherwise, they are worlds apart. □

TELEVISION

The Will to Power Rangers

MAGGIE GALLAGHER

IT'S FOUR-THIRTY. Do you know where your children are? If they've outgrown purple dinosaurs but still lack the hormones to appreciate Oprah Winfrey's sexual perversion du jour, chances are you'll find them with their eyes glued to ***The Mighty Morphin Power Rangers***.

Fox TV's latest hit features six gorgeous, live-action teens who morph into sleek, color-coded superheroes in spandex suits to fight villains with comic-book names such as Rita Repulsa and Lord Zed. It's a high-tech kickfest with all the moral complexity of *The Three Stooges*. Kids love it.

In the highly age- and gender-segmented world of children's toys and television, the Power Rangers have proved remarkable in their ability to draw loyal fans among kids of both sexes and all ages, from toddlers to pre-teens. *Power Rangers* draws a whopping 57 per cent Nielsen share among 6-to-11-year-olds. It is the number-one children's show, expected to generate sales of $300 million in Power Ranger toys this year alone, not to mention over 8 million videos, a million novellas, and 7 million pairs of Ranger-covered underwear.

The Power Rangers' popularity stems from their creators' canny borrowing of a patchwork of elements from past TV hits. As with the Teenage Mutant Ninja Turtles, part of the Power Rangers' appeal is that they are first and foremost teenagers. One recent episode opened with Rocky, Adam, and Billy, three incredibly clean-cut boy Rangers, hanging out in the school cafeteria, worrying about the school Sadie Hawkins dance. Only forlorn Adam has yet to be asked. Aisha, an adorable girl Ranger wearing a yellow baby-doll minidress, suggests he seek out Sara: "I happen to know for a fact she thinks you're cute."

But wouldn't you know it, just as Adam stumbles across Sara near the volleyball courts, Lord Zed, a bad-tempered, pink-armored knight, sends a pack of his minions, a/k/a "putties," to interfere. "Not now!" Adam cries plaintively, as he prepares for hand-to-hand Kung Fu combat. Putties dress in white spandex. Their arms droop, and they quiver a lot. "They're like the Turtles' foot soldiers," my son tells me authoritatively, "except they're made of clay and you have to hit the Z on their chest to kill them."

Meanwhile Kimberly, the other girl Ranger (wearing a sweet-but-sexy pink angora sweater and a short skirt), is starting to worry. She and the other Power Rangers (sans Adam, who has been captured by Lord Zed's lieutenant, Goldar, a sort of ape-lion with wings and a bad attitude) gather before their chief, a big floating head named Zordon, who bears a remarkable resemblance to the Wizard of Oz. Zordon informs them of Lord Zed's dastardly plans. "We will have to boost the power of the thunderzords," intones Zordon ominously.

What is a thunderzord, you may ask? In a nod to the durable dinosaur craze, each Power Ranger has his or her own mechanical familiar: a giant robotic tyrannosaurus, pterodactyl, mastodon, saber-toothed tiger, unicorn, or firebird. What follows is a two-minute toy commercial. The Power Rangers leap astride their respective galloping prehistoric transportation devices, which then morph into giant robot-warriors, as in *The Transformers*. In the end, as you can imagine, the forces of evil are crushed: "Party's over, Goldar!" says Adam. (Or was it Rocky?)

When the Power Rangers shed their spandex, the show is transformed into a carbon copy of another pre-teen hit, *Saved by the Bell*, which features similarly wholesome teens involved in a Fifties sitcom high-school life.

The Power Rangers are multicultural and politically correct—racially, sexually balanced—but that hasn't saved them from coming under goo-goo fire. Teachers, in particular, claim *Mighty Morphin* insanity is wreaking havoc in the classroom and on the playground. In one study, 96 per cent

Miss Gallagher will have a nationally syndicated column, beginning in May.

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of teachers claimed to have witnessed *Morphin*-inspired acts of antisocial behavior. Day-care centers and nursery schools are taking steps to curb *Morphin* mania, from banning karate chops, to setting up special martial-arts rooms where temporarily overcome young fans can work off their enthusiasm on inanimate objects, to enforcing moments of *Morphin* silence in school. "We also don't allow Power Ranger talk on share days," Sharon Holt, director of the Montessori school in Lake Forest, California, primly informed the *Wall Street Journal*.

In this case the local cartoon prohibitionists are being aided and abetted by a sudden outbreak of international panic. In November, the Power Rangers were kicked off the air in Norway, Sweden, and Denmark after a 5-year-old Norwegian girl was kicked to death by playmates. How convenient it would have been if these once-orderly republics could blame their social decay on an American import. But alas, a police investigation showed no connection to the TV show, and Power Rangers once more roam the Scandinavian airwaves.

The Canadian Broadcast Standards Council condemned *Mighty Morphin Power Rangers* for "excessive violence." The problem, the council ruled, is that the violence is not sufficiently integral to the development of either plot or characters, and moreover no one ever suffers any physical consequences of violence.

The latter is a new and interesting standard for children's television: to be morally fit for kids, TV violence must be less cartoon-like, more graphic and realistic—less like Wile E. Coyote and more like *Pulp Fiction*.

As the Scandinavian would-be scandal shows, cartoons make easy scapegoats. Like campaigns to hand in toy guns at Christmas, the crusade against the Mighty Morphs and their ilk assuages the liberal heart's insatiable desire for symbolic acts of moral righteousness that require no effort on one's own part.

The truth is that the Power Rangers are no better and no worse than hundreds of earlier superheroes. They inhabit a comforting universe where right and wrong are crystal clear, and good always triumphs. Despite their critics, there are worse things than that with which to fill a 5-year-old's brain. □

BOOKS IN BRIEF

Professing Feminism: Cautionary Tales from the Strange World of Women's Studies, by Daphne Patai and Noretta Koertge (Basic, 235 pp., $24)

"WE ARE feminists and we are friends of feminism," state Daphne Patai and Noretta Koertge, and deliver a thorough and damning critique of Women's Studies programs in America's universities. Their book tells tales that are nightmares come to life: feminist students disrupting classes because there are male authors on the reading list; feminist students and professors disregarding "hard scholarship" because they value feeling over intellect; an almost complete subjection of academic goals to political activism and indoctrination; and most dangerous of all, deliberate measures to silence any disagreement from fellow feminists. Professors Patai and Koertge, who themselves teach Women's Studies, did not endear themselves to many colleagues by writing this dissent; the academic women who share their views are so intimidated by "ideological policing" among colleagues and students that they agreed to speak with the authors only on the condition of anonymity. This book seeks not to kill Women's Studies, but to save it. Feminists should listen closely.

—KARINA ROLLINS

The Vogue of Revolution in Poor Countries, by Forrest D. Colburn (Princeton, 135 pp., $19.95)

THIS CONCISE and impressive volume provides a highly original approach to understanding 22 revolutions in poor countries since World War II. Forrest Colburn emphasizes the role of revolutionary intellectuals, attached to a common core of socialist ideas, and fired by a revolutionary imagination culminating in an "attitude of self-righteous militancy." Mr. Colburn finds unexpected patterns among revolutions in disparate places. In so doing, he raises two major questions: 1) What was the impetus for these revolutions? and 2) "What explains the largely disappointing and at times tragic outcomes" of these revolutions?—the latter a question all too rarely asked. The author doesn't flinch from concluding that "revolutions are always messy and bloody. But contemporary revolutions in poorer countries . . . seem especially costly." These conclusions arise not merely from a solid grasp of the scholarly literature but also from the substantial periods of time Mr. Colburn spent in Ethiopia, Nicaragua, Cuba, Burma, and Vietnam.

—PAUL HOLLANDER

Endangered Pleasures, by Barbara Holland (Little, Brown, 175 pp., $17.95)

I MUST disagree with the publishers when they claim that, against the politically correct asceticism of the day, this book is a celebration of hedonism. Such an exaggeration does Barbara Holland a disservice, because she is not writing about hedonism at all—which is the mindless consumption of pleasure. Miss Holland's enchanting book advocates a thoughtful, joyful appreciation of pleasures that permeate the day, from sleeping late ("afloat under weightless goose down in winter") to getting mail ("my mailbox is wedged with luminescent invitations from the world"). I laughed in marvel at the degree to which Miss Holland captures on paper the many delights in life. Her point is benevolent: to remind us how much our lives can be punctuated by joy if only we allow it. She calls this "the gentle nourishment of the ordinary day." If you care to be obsessed with pleasure, and make it an end in itself, that is your problem, and you will suffer what philosophers call "the hedonistic paradox," where, sought for its own sake, pleasure becomes unattainable. But don't try to pin that creed on Barbara Holland.

—MATTHEW CAROLAN

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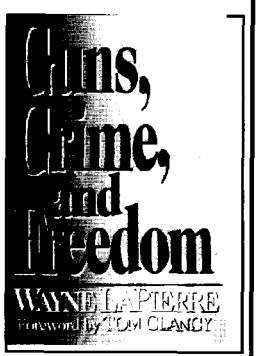

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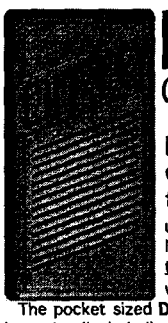

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ROBERTS

(Continued from page 51)

a long-standing legal tradition, the majority held that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party."

These rulings caused an uproar among civil-rights activists, who charged that the new Reagan Court was racist. The illegal privileges that had evolved in the 18 years since *Griggs* was decided had become a squatter's right, and Congress and the Bush Administration were bullied into enacting the new inequality into law. The 1991 Civil Rights Act in effect repealed the 1964 Act by legalizing racial preferences as the core of civil-rights law. The new Act was designed to overturn the *Wards Cove* and *Wilks* rulings and to codify the disparate-impact standard of *Griggs*.

The statute also slammed shut the courthouse doors on white male victims of reverse discrimination. If statistical disparities or racial imbalance is proof of discrimination, white males adversely affected by quotas can have no standing in court. To give them standing would necessarily imperil the quota remedies for racial imbalance. You cannot simultaneously declare that anything short of proportional racial representation is discrimination and recognize the adverse impact of the "remedy" on white males. Under the 1991 Civil Rights Act, white males have no grounds for discrimination lawsuits until they are statistically underrepresented in management and line positions. They have no claims to be statistically represented as hirees, trainees, and promotees until preferred minorities are proportionately represented in management and line positions. Indeed, under Brennan's interpretation of the Civil Rights Act, which says that anything that helps preferred minorities is broadly consistent with the law, the disparate-impact standard could one day be ruled inapplicable to whites.

The 1991 Civil Rights Act added the threat of compensatory and punitive damages to the pressure for quotas. In "Understanding the 1991 Civil Rights Act," an article in *The Practical Lawyer*, Irving M. Geslewitz recommended that corporations apply cost–benefit analysis to determine whether "they are safer in hiring and promoting by numbers reflecting the percentages in the surrounding community than in risking disparate-impact lawsuits they are likely to lose." To counter charges of "hostile work environments," company lawyers want to be able to tell juries that their clients have many minority and women employees at all levels.

The day after the Civil Rights Act of 1991 became law, a *New York Times* article, "Affirmative Action Plans Are Part of Business Life," observed that quota policies are as "familiar to American businesses as tally sheets and bottom lines." A 1991 *Business Week* article entitled "Race in the Workplace: Is Affirmative Action Working?" reported that affirmative action is "deeply ingrained in American corporate culture. . . . The machinery hums along, nearly automatically, at the largest U.S. corporations. They have turned affirmative action into a smoothly running assembly line, with phalanxes of lawyers and affirmative-action managers."

The 1964 Civil Rights Act, which undertook to eliminate race and sex from private employment decisions, has instead been used to make race and sex the determining factors. Reverse discrimination is now a fact of life. Indeed, in strictly legal terms, the situation for white males today is worse than the situation for blacks under *Plessy* v. *Ferguson*'s separate-but-equal doctrine. In practice, blacks suffered unequal treatment under *Plessy*, but the decision officially required equal treatment. Under today's civil-rights regime, by contrast, whites can be legally discriminated against in university admissions, employment, and the allocation of government contracts.

In his famous dissent from *Plessy*, Justice John Marshall Harlan worried that the Louisiana law requiring racial segregation on public transportation would allow class distinctions to enter the legal system, since blacks and whites were economically as well as racially distinct. Harlan was certain that he wanted no status-based distinctions in the law. Our Constitution, he said, "is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful." Today, civil-rights activists reject Harlan's color-blind views. Privilege before the law has replaced equality before the law. □

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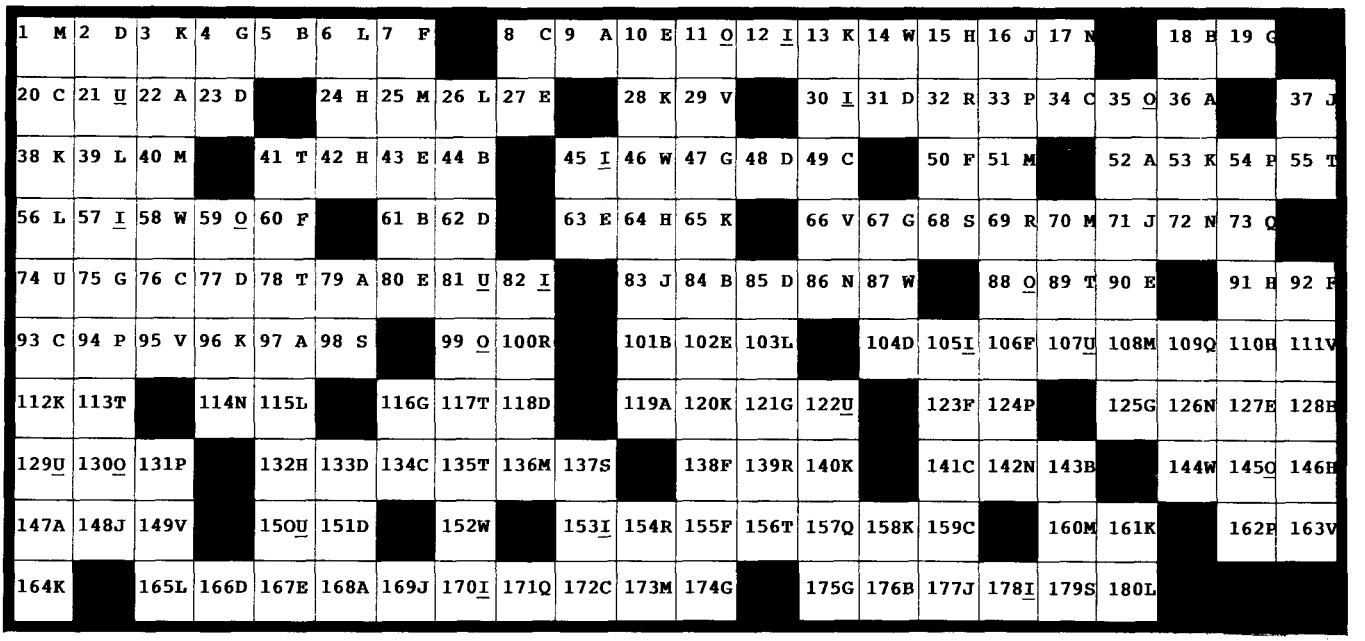
TRANS-O-GRAM / Kem Putney



DEFINITIONS

A. Christopher Wren, e.g. — 36 52 22 119 147 168 9 97 79

B. Popular state-sponsored games — 84 5 101 44 176 128 61 143 18

C. Numerical subject — 76 8 34 141 49 20 93 159 134 172

D. "Deadly" obsession — 62 118 48 133 85 104 23 166 77 2 151 31

E. Neat, at sea — 167 63 80 127 90 102 43 10 27

F. In the know — 50 7 138 123 92 155 106 60

G. Neat, to a fault — 175 67 116 47 4 121 174 19 75 125

H. Ed McMahon, et al. — 91 64 146 132 42 24 110 15

I. Farmer's "protection" — 82 153 30 105 12 57 170 178 45

J. Former Turkish empire — 169 37 16 148 177 83 71

K. Part of Cygnus (2 words) — 96 120 140 28 38 53 164 3 112 158 161 65 13

L. Like a saddle? — 6 56 39 115 165 103 26 180

M. Imposed solitude — 108 51 70 1 173 160 136 25 40

N. City on the Merrimack — 86 114 17 142 126 72

O. Idle fancy—sometimes monstrous — 35 88 99 130 59 11 145

P. Bids — 162 124 54 131 33 94

Q. 1796 Italian battle site for Napoleon — 73 157 109 171

R. Hangman's tool — 100 154 139 69 32

S. Sins — 98 179 68 137

T. Slyly — 135 117 89 156 41 78 55 113

U. Asks — 74 21 129 122 150 81 107

V. Sealed, so to speak — 163 149 29 66 95 111

W. Petroleum derivative — 87 58 46 152 144 14

DIRECTIONS

The object of TRANS-O-GRAM is to fill in the puzzle diagram by guessing the words from their definitions, and transferring each letter of the guessed word to the correspondingly numbered square in the diagram. When the diagram is filled in it will spell out a quotation from some published work (reading normally from left to right, black boxes indicating the ends of words); also, when the words have all been filled in above, their initial letters will spell out the author and title of the quoted work. The acrostic feature, and the relative word-lengths in the diagram, will assist in the solution. Spelling and definitions on the authority of *Webster's Deluxe Unabridged Dictionary*, Second Edition.

Solution to Last Issue's Trans-O-Gram. [JEFF] JACOBY: *Death of Federalism*: "The NEA consistently rewards novelty over quality. Its grant recipients are often distinguished by little more than intolerance toward traditional standards and art forms. Artistry, beauty, and craftsmanship are routinely rejected in favor of radical politics."

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Why the No On Foreign Aid

NEW YORK, FEBRUARY 17

The sense of it in the conservative community is that the money proposed for Russia is so insignificant as to reduce it primarily to a symbol. So, is the United States in the business of giving foreign aid just to begin with? and if so, are we in the business of giving aid to a country that a) dug its own grave, making liberal use of slave labor; and b) is showing itself massively incompetent to climb out of that grave?

On the first point, President Clinton proposes giving $788 million to Russia. This in a season when we have made possible, or seek to do so, $47 billion for Mexico. Clinton proposes a sum equal to roughly twice the sum proposed for public radio and television. A recent estimate puts at $1.2 billion what Moscow has spent so far on the Chechen campaign. And the list of economic atrocities within Russia is enough to curl the hair of any accountant, certainly enough to discourage investment. Inflation last month was 18 per cent. Oil sells within Russia for a fraction of its commercial value. A thousand economic satrapies continue to operate substantially free of the discipline of the market. Unemployment is at a ludicrously low rate, signaling a sluggish accommodation to market forces. The money requested by Clinton is, then, primarily a symbol of U.S. willingness to make a gesture.

Now many Americans are affronted by this gesture, especially alongside the huge exposure we are undertaking in order to save Mexico. That resentment has also to do with the wonder widely felt about the extraordinary incompetence of government. Seven years ago we were floored on learning that the S&L business was five minutes away from the greatest bankruptcy in American history. There was no excuse for a Democratic Congress's blithely running up the guarantees of deposits to $100,000, no excuse for a Republican Administration's failure to oversee the drift in S&Ls, no excuse for Congress's repealing Regulation Q, thus permitting the S&Ls to raise interest rates.

And now with regard to Mexico people are asking: How is it that we discovered *that* crisis, once again, only five minutes before midnight? President Salinas was off to a wonderful start, but while we were basking in pleasure over his accomplishments we suddenly discovered that Mexico was broke. Why hadn't some clerk in Washington alerted us?

When such fiascoes happen there is a quite legitimate thirst for—blood isn't the right word. Justice. The depositors weren't hurt by the S&L mess, but the investors were, which was as it should have been. It is now said that we cannot penalize the credit industry that sent money down to Mexico because the sinners were undifferentiated. It wasn't only stockbrokers and financiers on Wall Street who sent money down there after economic justification had run out. They turned around and sold these securities to pension funds and to people at large.

Some effort should be made to single out the brokers of recklessness and devise a formula for their contributing to cleaning up the mess they made. Those Wall Streeters do not, in good years, donate to the Treasury a nickel more than they have to give over in taxation.

Michael Kinsley wrote a clever piece in *The New Yorker* in which he pointed out that the public has a lopsided idea of how much money we actually dole out in foreign aid. It is far less than 1 per cent of our budget, a long way from the 17 per cent that proved to be the public impression. But the naysayers in Congress do know the size of the recommended package for foreign aid, and their resistance reflects public opposition even to the gesture.

In fact, bailing out Mexico and helping Russia are legitimate national objectives. How to communicate this? It is very difficult primarily because the public has made up its mind about the incompetence of this Administration, does not trust its judgment, and doesn't believe that money passing through its hands to Russia and Mexico will accomplish objectives palpably in the national interest.

It isn't as if it were Ike up there asking for the money. Or Reagan. □

"If I were you, I'd stop watching Crossfire."

Storm in Channel, Continent Cut Off

NEW YORK, FEBRUARY 21

The Brits are very worked up over the question where to go on the European Community. A very quick rundown sees John Major signing (in 1992) the Maastricht Treaty, an ambitious accord designed to cause the ecumenical juices to run at the prospect of a United States of Europe. In the three years since Mr. Major signed the Treaty two things became clear, the first that the federalist bureaucracy in Belgium was prepared to run away with member states' sovereignty, the second that the majority of British voters had no such desire.

Arose, then, the question of a common currency. Mr. Kenneth Clarke is the chancellor of the exchequer and likes the idea of a common currency. But Mr. Major does not like that idea, and Mr. Clarke serves at the pleasure of Mr. Major. The arguments in favor of a common currency rest primarily on the derivative protections member states have against aggressive money policies by other member states. The devaluation of a currency, as done a few years ago by Great Britain under massive pressure, has the effect of dislocating exporters/importers who had made commitments on the antecedent value of the currency. On the other hand, maintaining a common currency can export the economic errors of one government to other countries within the currency bloc—as when the monetary disturbances of German reunification were transmitted to France, Britain, Spain, etc., via Europe's exchange-rate system. And, obviously, those opposed to a single currency believe that the power over one's own money is an aspect of sovereignty.

It is proposed that the entire question be taken before the people. The burden of explaining the intricacies of a common

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currency is not welcomed by many MPs. But it is not difficult to convey an apprehension over the loss of sovereignty. The Brits began their movement toward sovereignty in 1215 with Magna Carta, and they have a good feel for the right points to raise.

Last Sunday the *Sunday Telegraph*, the primary editorial spokesman for British Conservatives, weighed in heavily with an editorial entitled, "A modest proposal for 1996"—the year in which Europeans meet to decide in what direction to take the Maastricht Treaty.

The editorial begins by urging a repeal of the prehensile indenture of the Maastricht Treaty, which aims to snatch away one after another freedom of the member states. Do away with it altogether, the *Telegraph* urges, and do away at the same time with all references to a European Community. Choke it back to, very simply, the European Common Market.

The editorial goes on to recommend abolishing the Common Agricultural Policy. This has been the most troublesome feature of the Common Market, given the leverage that farmers in France especially, but also in Germany, exercise on politics. "Why on earth should it [Maastricht] have any competence . . . over what we may eat and drink and how we should produce it?"

It is recommended that the so-called Luxembourg Compromise be enshrined, "the device which allows a single member state to block a proposal on the grounds that its supreme national interest is at stake." Moreover, the *Telegraph* recommends something on the order of the Bricker Amendment, which narrowly failed in the late Fifties in America: The highest court in Great Britain could refuse to obey a European Court order if it found it against the declared best interests of the state.

At the present moment, the "EC is constitutionally addicted to European integration in every field, and the addiction can only deepen the longer Britain dithers." The editors assert without significant fear of contradiction, "Everything proposed above is consonant with the wishes of the mainstream of the Conservative Party about Europe."

Many years ago Wilhelm Roepke, the tutor of Ludwig Erhard, who brought Germany out of the postwar depression, explained why he opposed the Common Market for Europe. "I oppose it because I am for free trade." This sounded paradoxical, but he went on to say that a Europe joined together in free trade was almost certain to act oligopolistically against the rest of the world.

We see the beginnings of a common market in the Western Hemisphere, another in the Pacific basin. We have to hope that the endorsement of GATT will enfeeble regional protectionism of the kind Dr. Roepke feared Europe would engage in. Meanwhile, one welcomes the reservations crystallizing in Great Britain on the dissipation of sovereignty. □

In Pursuit of Justice

NEW YORK, FEBRUARY 3

DEFENSE. Isn't it true . . . sir . . . that you drink?

WITNESS. Well, yes. I used to—

DEFENSE. True that you have an alcohol problem?

WITNESS. I used to—

DEFENSE. And did you not arrive, that night, with a blonde lady at your side?

WITNESS. Oh, Sally? Yes. She is a good friend of my wife's—

DEFENSE. And when you were let in, you suggested that you all have a sauna together?

PROSECUTION. Objection, your honor. Immaterial.

COURT. Sustained.

DEFENSE. You classified yourself as a "friend" of the defendant?

WITNESS. Well, I've known him for 13 years and seen him a lot of times—and in fact I really love him.

DEFENSE. But you were never at his home for dinner, you were not present at his private wedding, you never went to a football game with him, were never his golfing partner, what kind of a "friend" can you have been?

WITNESS. Well, I always sort of thought of him as a friend, and he talked to me a lot, and I saw him the next day, when he called me up to his bedroom—

DEFENSE. We are not talking about any conversation in the bedroom. The defense denies you were even *in* the bedroom. It is not yet established by testimony that you were *ever* alone with him. When else were you alone with him?

WITNESS. Well, in a manner of speaking, we were alone after the . . . incident.

DEFENSE. What do you mean by that . . . sir?

WITNESS. Well, that's a technical point, I mean, being "alone" with him. Before the two . . . victims . . . were murdered, you could say I wasn't "alone" with him, when I drove up to see if I could borrow his sauna, there were technically *four* of us, but after he . . . got rid of the other two, *then* we were alone together.

DEFENSE. Objection, your honor!

COURT. Objection to what, counselor?

DEFENSE. Objection to— The witness, your honor, has acknowledged that he has, had, has a drinking problem. And he has acknowledged he had a woman, a "blonde" friend, acknowledges, your honor, that he is a womanizer—

PROSECUTION. Objection, your honor. The witness never said he was a "womanizer."

COURT. Sustained.

DEFENSE. Acknowledged that he had a blonde woman with him the night he called on the defendant, and that he wanted to take a sauna with her—some people, your honor, would call that a "womanizer."

COURT. Some people, counselor, do not know the rules of evidence. Continue with your grounds for objection.

DEFENSE. I was saying, your honor, that there are grounds for impeaching the credibility of the witness.

COURT. Because he drinks, and goes out with women who are not his wife?

DEFENSE. Your honor, when he says he was there when the defendant allegedly killed the alleged victims--

PROSECUTION. Objection. There are no alleged victims, your honor. There are victims, just plain victims, not alleged.

COURT. Sustained.

DEFENSE. How can the jury be expected to believe that the witness saw the alleged—saw the victims with the alleged . . . saw the victims with the defendant when he might have been blind drunk?

PROSECUTION. Objection, your honor. It is presumed the witness was not blinded by drink, unless the defense establishes otherwise.

COURT. Let me ask the witness. On the evening in question how much had you had to drink when you allegedly drove by when the alleged crime . . . when the crime . . . was being committed?

WITNESS. I had a couple of beers, your honor.

DEFENSE. Your honor, we cannot trust the evidence of the witness. He pretends the blonde lady was with him as a friend of his wife, he pretends his alcohol "problem" was of the past. Your honor, I wish to suspend the proceedings. The defense demands that the witness submit to a qualified ophthalmologist to test his vision after he has been drinking—

PROSECUTION. Objection, your honor. Is the prosecution supposed to submit all its witnesses who drink to eye tests before they take the stand?

COURT. *(banging down his gavel).* We will have a recess, during which I shall consider these questions. Counsel for the defense and the prosecutor will approach the bench. These are *serious* questions. □

(Universal Press Syndicate)

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From the Mouth of Babs

A WEEK after she delivered her lecture "The Artist as Citizen" to Harvard's Kennedy School, the headline in *People* was unapologetic: "Lampoon her if you like, feisty Barbra Streisand draws rave reviews and a full house at Harvard."

I know all about lampooning leftist movie stars. You can't cover politics in Washington without bumping up against them, and I've so enjoyed the experience I've made it a hobby. The result is a satchel of memories with which I hope someday to dazzle my grandchildren, assuming my grandchildren will be dazzled that grandpa once got hugged by Jon Voigt. But that's not all. Cher asked me my name during a press conference. Glenn Close once squeezed my hand. And, unforgettably, I spent 45 minutes—I mean, *45 minutes*—listening to Susan Dey excoriate the Bush Administration for cutbacks in the HUD budget. I could have drowned in her eyes.

Much as Democrats appreciate their efforts, the stars sometimes find themselves in over their heads. Several years ago, a planeload of stars was flown in for a pro-abortion march on the Washington Mall, and when they disembarked a publicist brought me over to interview a gorgeous TV starlet. I asked her the usual question about why she was here, expecting the usual invocation of "back-alley abortions" and coat hangers. She gave an empty glance to the PR guy, who nodded encouragement. "Well," she said, "I wanted to join the march because of my commitment to all human life. All life is sacred, even the life of the un- . . ." Gorgeous or not, this one had been badly briefed! The publicist whisked her away in mid-sentence to a corner of the press tent, where he gesticulated wildly. When she and I spoke later she had got with the program. She talked about coat hangers with the confidence of a hat-check girl.

Mr. Ferguson is a senior writer for The Washingtonian.

This is the kind of elementary mistake that Barbra Streisand would never make. She knows where she stands on the issues. As a Hollywood arm-twister she raises millions for the Democratic Party. She is famously chummy with President Clinton, though probably less so with his wife. She sang for JFK and LBJ and has dined with Janet Reno. She sits on boards and stuff. Frank Rich, the left-wing attack dog of the *New York Times*, has dubbed her, with his typical accuracy, the only public defender of liberalism in America.

Hence her invitation to speak at the Kennedy School; hence her acceptance; hence "The Artist as Citizen"—though a better title, from the Kennedy School's perspective, would be "The Artist as Citizen with a Million Dollars to Donate to a Floundering School of Public Administration." Her road to this august podium was not smooth. The March number of *Vanity Fair* describes her split with Leon Wieseltier, *The New Republic*'s literary editor and the party's pre-eminent intellectual. Leon had called politically active stars "bubble-headed." (Lampoon them if you will!) "Such a negative, jealous, maybe not jealous, but mean-spirited attitude toward this generality of people!" Barbra responded.

Roman Genn

Whether the Democratic Party—already struggling for its soul—could have survived a permanent rift between its Wieseltierian and Streisandian wings, we will never know. For a rapprochement was devised by Shirley MacLaine, herself a Democrat. Together the warring philosophes watched *Quiz Show*, at Barbra's house, on the couch. "They spoke each other's language," said Miss MacLaine. But we already knew that.

HERE, from "The A as C," is some of Barbra's language: "Art is the signature of a generation." "After many years of self-scrutiny, I've decided the most important things come from outside myself." "I'm very proud to be a liberal, okay?" And, implausibly: "There are reasonable Republicans." Barbra swears she wrote the speech herself, but I detect here the weight of Leon's learned hand. Surely they did more on that couch than watch a lousy movie.

People is right: It is too simple to lampoon the artist as citizen. She should be seen in her natural habitat, so I rented the new video, *Barbra: The Concert*. Even here, alas, the adjective "bubble-headed" clings to her like a burr. Anyone who has tried to forget her career will be shocked to discover that her repertoire ("Evergreen," "The Way We Were," "You Don't Bring Me Flowers") is just as unpleasant as it seemed on first hearing. Her technique remains unchanged too. With her cavernous sinuses, her inexhaustible lungs, she doesn't so much sell a song as wrestle it to the ground and kneel on its throat. She should try this with her songwriters.

The show is a two-hour valentine, self-addressed; narcissism is the theme. The script has her re-enact her therapy sessions. There are still more epigrams: "Relationships are difficult to have," she announces. (Leon's influence again.) And in closing she says: "Take care of yourselves. And each other. I'm really happy, I mean that," as if we were ever in doubt! Her encore is "Somewhere": "Hold my hand and we're halfway there. Hold my hand and I'll take you there."

Of course she will. Here, then, is the Artist as Artist: self-indulgent, sanctimonious, obtuse and frivolous and over the hill. Barbra isn't merely the defender of modern liberalism. She is its symbol.

—ANDREW FERGUSON

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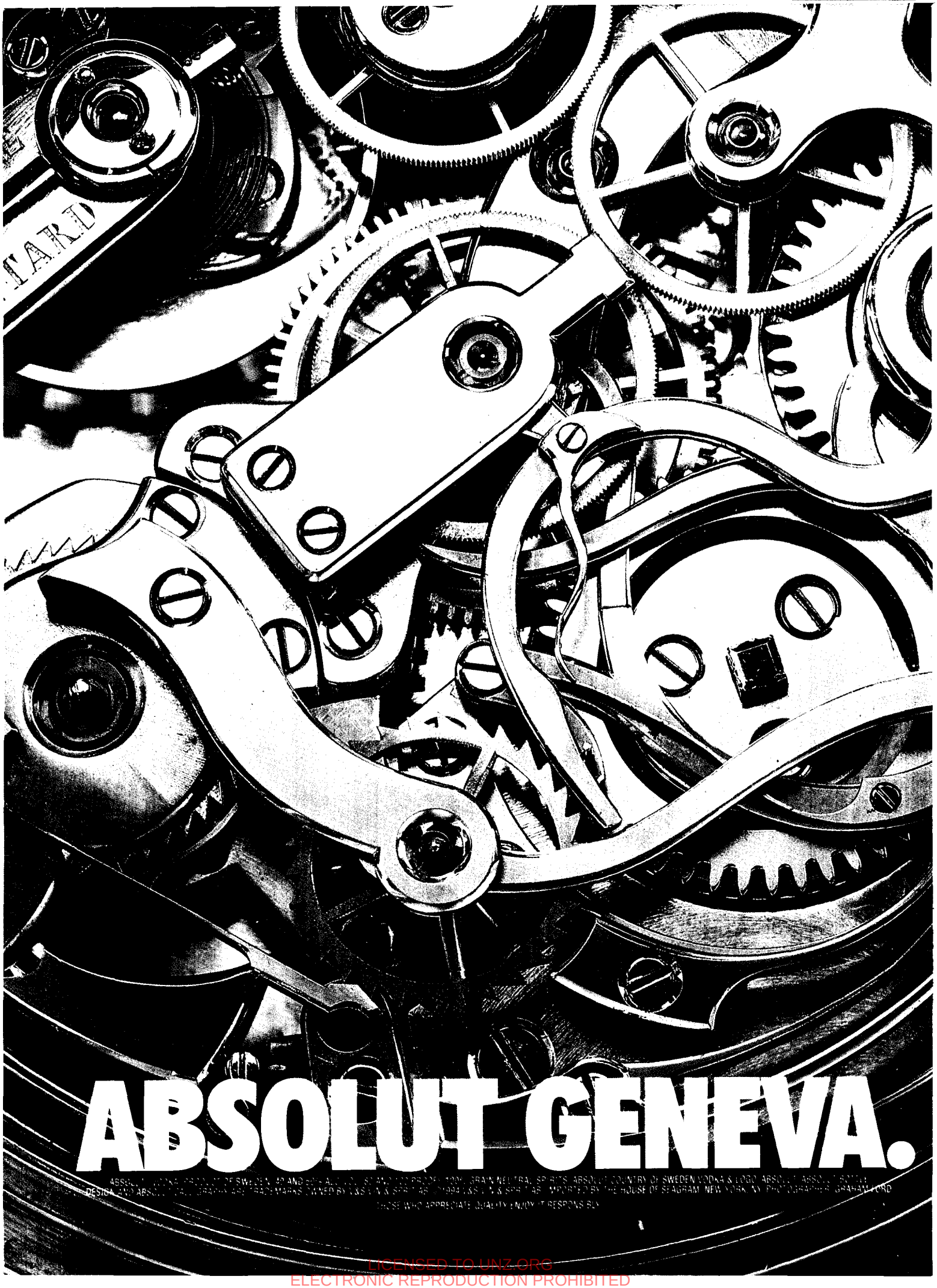

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